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A SHORT
CONSTITUTIONAL
HISTORY OF ENGLAND

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PREFACE.

ALTHOUGH many handbooks of Constitutional History exist, I hope that the arrangement of this little book will be found useful enough to warrant its entry on a field apparently already so well occupied.

The want of a small book on English Constitutional History, in which the various subjects are treated in a connected and consecutive manner, has been much felt by me, not only whilst myself reading for the History School, but also whilst subsequently engaged in reading with others. I have therefore determined to publish my notes, in the hope that they may be useful to those about to read for the Schools of Modern History or Jurisprudence, and to any one who desires to ascertain at a glance the leading facts in the history of any subject of constitutional interest.

It has been my endeavour to give, with the Compiler's kind permission, as many references as possible to Professor Stubbs' Collection of Charters, in the hope that such references may in some slight degree assist the reader in his study of that valuable work.

I have to acknowledge with gratitude the courtesy of Professor Stubbs in allowing these references and extracts to be made, and take this opportunity of expressing my thanks to those who have kindly aided me with suggestions and advice, more especially to Mr. F. S. Pulling, M.A., of Exeter College; Mr. F. York-Powell, M.A., Lecturer of Christ Church; and Mr. R. Lodge, M.A., Fellow and Tutor of Brasenose.

I trust that the dates—to verify which no pains have been spared—will be found accurate, and that the arrangement of the notes will really prove of some slight use to those who are studying Constitutional History.

H. ST. C. F.

Halliford House, Middlesex.

October, 1882.

EDITIONS OF BOOKS REFERRED TO.

Stubbs' Select Charters. *Fourth edition.* 1881.

Stubbs' Constitutional History. 3 vols., cr. 8vo. 1875-8.

Hallam's Constitutional History. 3 vols., cr. 8vo. 1876.

Hallam's Middle Ages. 2 vols. *Eighth edition.* 1841.

May's Constitutional History. *Sixth edition.* 3 vols.,
cr. 8vo. 1878.

Annals of England. *Library edition.*

ERRATA.

Page 22, line 23, for *ch. ii.* read *ch. iii.*

„ 27, „ 9, for *Roger Fitzosbern* read *William.*

„ 37, „ 20, for *Westminster I.* read *Westminster II.*

„ 48, „ 12, for *was* read *were.*

„ 64, „ 28, for *places* read *pleas.*

„ 109, lines 15, 23, for 1695 read 1696.

„ 137, line 23, for 1828 read 1829.

„ 137, „ 26, for 1405 read 1404.

„ 145, note 1, for *Stubbs* read *May.*

„ 148, „ 1, for *Stubbs* read *Hallam.*

„ 152, line 20, for *Oxford* read *Orford.*

„ 185, marginal note 2, for *wood* read *wool.*

„ 192, „ 5, for 1636 read 1606.

NOTES ON THE CONSTITUTIONAL HISTORY OF ENGLAND.

CHAPTER I.

THE CROWN.

KINGSHIP in England was a creation of the Anglo-Saxon migration ; the Teutonic tribes in Germany had been ruled in time of peace by *Earldormen*, in time of war by *Heretogan*. The word *King* (*cyn-ing*) is probably closely connected with *Kin* ; the King being regarded as the representative of the Nation, and holding an office to a great extent elective, was "the child of the people not their father." The commanders of the invading hosts, (e.g., Hengist and Horsa in 449), at first leaders in war, soon blended with their military duties the office of civil rulers ; *from this union sprang the idea of royalty*.

Origin of
Kingship.

THE ANGLO-SAXON KING at first occupied a position which was *merely personal* ; but with the increase of territory, and with the growth of the large kingdoms, the royal power tended to become *territorial*, and steadily increased ; owing to :—

Anglo-Saxon
King.

1. Successful wars against neighbouring kingdoms, and, later, against the Danes.

2. The creation of a nobility of service dependent on the King.

3. The connection between religion and loyalty established after the introduction of Christianity, 597.

4. The tendency of one kingdom to supremacy, e.g., *Mercia, circ. 700—825, Wessex, 825.*

5. The increase of the King's revenues and lands.

The growth of the royal power is marked by changes of title, e.g., Alfred issues laws (*circ. 890*) as "*King of the West Saxons.*" Athelstan (*circ. 930*) as "*King of the English,*" and Edgar, some thirty years later, as "*Totius Angliæ imperator.*" The King began to be regarded as the source of justice, violations of the law as breaches of the King's peace, whilst Alfred created the crime of

Treason.

HIGH TREASON,

And declared it deathworthy. Alfred's law of treason runs, "*if any one plot against the King's life, of himself, or by harbouring of exiles, or of his men, let him be liable in his life and all that he has.*" For long after this treason remained undefined except by the arbitrary decisions of the judges, e.g., it was held to be treason to kill a relative or servant of the King, to assault a subject of the King on the highway and deprive him of his liberty, or to "accroach" royal power by retaining an exclusive hold on the administration, as in the case of the Despensers and Roger Mortimer. In 1352, in answer to a petition of Parliament, was passed the Statute of Treasons (25 Edw. III., st. 5, c. ii.) declaring treason to be limited to seven offences and forbidding other crimes to be regarded as treasonable without the express permission of Parliament.

Definition of Treason.

The seven heads were :—

1. *Compassing or imagining the death of the King, the Queen, or their eldest son or heir.*

The fact that the mind has imagined the King's death must be proved by some overt action which

¹ Stubbs, *Sel. Charters*, 63.

may be a distinct treason in itself, *i.e.*, levying war against the King. Words only, or unpublished writings, do not constitute the offence of "compassing" but may be admitted as evidence of an overt act of treason, as in the cases of Peacham and Algernon Sidney. (Appendix B.) This clause of the statute was frequently much strained, *e.g.*, in the case of the Duke of Norfolk convicted Jan. 16, 1572 of compassing the Queen's death, the overt act of proof being his intrigue for a marriage with the Queen of Scots, Elizabeth's rival. By a constructive interpretation a conspiracy to imprison¹ or depose the sovereign has been held to be an overt act of compassing; whilst, in order to bring conspiracy to rebellion, *which the statute does not notice until it assumes the form of levying war*, under the penalties of treason, it was held that evidence of such a conspiracy might be admitted to prove the overt act of compassing. Conspiracies to rebel were however declared treasonable by Statutes of 1571, 1661, and 1795, (the duration of the Act on each occasion being limited to the reign in which it was passed), and finally by the Treason Act of George III., 1817 (57 Geo. III., c. vi.)

Treason Act,
1817.

2. *Violating the King's companion, eldest unmarried daughter, or eldest son's wife.*

3. *Levying war against the King in his realm.*

"Force," says Mr. Hallam, "unlawfully directed against the supreme authority constitutes this offence." The treason may be either directly against the King's person, or against him constructively as being aimed at his Government, *e.g.*, the rebellion of the Earl of Essex, 1601, and popular risings, even when such risings are only

¹ "Experience hath shewn that between the prisons and the graves of princes the distance is very small."—Sir Michael Foster on High Treason.

for the purpose of destroying meeting houses or enclosures, (See case of *Damaree* and *Purchase*, Appendix B.), if such risings have a *general* object, *i.e.*, to destroy *all* enclosures, as opposed to a *particular* object to destroy some particular enclosure. The *Riot Act* of 1715 has, however, given the Government power to deal with rioters as felons rather than as traitors.

Riot Act,
July, 1715.

4. *Adhering to, and aiding, the King's enemies, in his realm and elsewhere.*

5. *Counterfeiting the King's Great or Privy seal.*

6. *Counterfeiting the King's money, or bringing false money into the realm.*

7. *Slaying the Chancellor, Treasurer, or Justices whilst discharging their duties.*

Legislation on
Treason, 1382.

1397.

1547, 1553, 1486.

1559.

1571.

1702.

1707.

In 1382, owing to the insurrection of the previous year, it was made treason to begin a riot, and in 1397 the heads of treason were still further defined. Under Henry VI. and Henry VIII. the list of treasonable offences was greatly increased, but these new treasons were abolished by Edward VI. (1547), and Mary (1553). In 1486 it was declared that treason could only be committed against a King *de facto* not *de jure*; in 1559 it was made treason to deny the Queen's title; in 1571 to deny the power of the Queen and Parliament to limit the succession; in 1702 to hinder, or attempt to hinder, the next in succession to the throne according to the Act of Settlement; in 1707 to assert by writing or printing the right to the crown of any other person than the next in succession according to the Act of Settlement, or to deny the power of the Sovereign and Parliament to limit the succession; whilst in 1817 was passed the *Treason Act* of George III. declaring it treason,

Treason Act,
1817. c

1. *To compass the death, bodily harm, restraint, deposition, or dishonour of the King.*

2. *To levy war, or conspire to levy war, against the King to induce him to alter his measures, or for the purpose of overawing Parliament.*

3. *To treat with any foreigners for the invasion of the King's dominions.*

4. *To express such compassing or intentions by publishing any printing or writing, or by any overt act or deed.*

In 1552 a statute of Edward VI. made *two* witnesses necessary to prove an act of treason. In 1695 it was provided that the two witnesses must depose *to acts relating to the same treason* (e.g., one witness to an act of imagining the King's death, and one to an act of adhering to the King's enemies, were not sufficient), whilst the same statute allowed the accused to have a copy of the indictment five days before the trial, and a panel of the jury two days before. Counsel were allowed for the prisoners, who were also permitted to compel the attendance of their witnesses; no prosecution for treason (except for an attempted assassination of the King) could be commenced after three years from the commission of the offence. In 1708 it was further provided that the copy of the indictment should be delivered ten days before the trial, together with a list of the witnesses for the prosecution, and of the jury. Prosecutions for treason were still further regulated in 1800, 1825 and 1842. In 1848 the offences which had before been regarded as High Treason, with the exception of those actually committed against the sovereign, were made *treason felony*, and in 1870 forfeitures for treason were abolished and the punishment reduced to hanging.

Legislation on
Treason, 1552.
1695.

1708.

1800, 1825, 1842
Treason Felony
Act, 1848.

1870.

Early checks on
royal power.

The growing power of the King was, from the earliest times, subject to two checks.¹

1. The increasing power of the nobles from grants of land, *sac* and *soc*, etc.

2. The elective character of the monarchy.

Hereditary
succession.

The Succession and growth of the hereditary principle.

The germ of the hereditary principle may be traced very early in the fact that, while the Witan (ch. iii.) had the sole power of electing the Anglo-Saxon King, they almost invariably confined their choice to the royal family and to the eldest male representative, *supposing him to be of full age and capacity*.² *Exceptions*, Canute, 1017; Harold, 1066.

The principle of hereditary succession was not developed until EDWARD II.

The elective character of the monarchy was almost the only check on the irresponsible despotism of the Norman Kings.

William Rufus.
Henry I.

WILLIAM RUFUS and HENRY I. supplanted their elder brother Robert, and Henry (in the Charter of

¹ The strength of these checks depended greatly on the *personal character* of the King, which in early days, even more than in later, had much to do with his power and the welfare of his people. Notice the distinct decline in the royal power owing to the weakness of Kings like Edward the Martyr, Ethelred II. and Edward the Confessor.

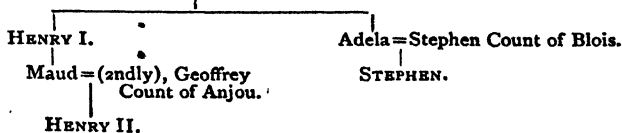
² The nominee of the late King occasionally had the advantage, *e.g.*, Harold named by Edward the Confessor. Minors as a rule were not elected for practical reasons—the only instances being the two brothers, Edward the Martyr, 975, and Ethelred II., 978 (or some authorities 979)—thus Ethelred I. was chosen (866) in preference to his young nephew; Alfred (871) was preferred to the sons of Ethelred; Athelstan, the illegitimate son of Edward the Elder, was chosen (925) before his legitimate brother; Edred (946) before Edwy; and Edward the Confessor (1042) before the son of Edmund Ironside.—*See also* STUBBS, *Sel. Charters*, 62. *Conc. Legatin*, Cap. xii.

liberties 1100) declares himself crowned "*by the consent of the baronage of the realm.*"

Henry endeavoured to procure the throne for his daughter, the Empress Maud, by making the barons swear fealty to her, but STEPHEN obtained the crown by his own energy, and the voice of the people of London; he declares himself "*elected King by the assent of the clergy and people,*" he failed however to secure the recognition of his son Eustace as his successor; and HENRY II.,¹ son of the Empress, was said to have "*received his hereditary kingdom by the voice of all.*" RICHARD I., Henry's eldest surviving son, was recognised as his father's heir 1189, and is said to have been "*elevated to the throne by hereditary right after a solemn election by the clergy and the people.*" JOHN, however, obtained the crown in preference to his nephew Arthur, a minor, and at his coronation Archbishop Hubert Walter "declared in the most explicit terms that the crown was elective, giving even to the blood royal no other preference than their merit might challenge."² The idea that the succession was confined to the male line, which, in spite of the efforts made in favour of the Empress Maud, was a prevalent one, prevented Arthur's sister Eleanor from being named, and on John's death the succession of the youthful HENRY III. was secured by the admirable policy of the Earl of Pembroke notwithstanding his father's bad government. EDWARD I. declares himself to have obtained

1

WILLIAM the Conqueror.



² Hallam, Mid. Ages, ii., 126.

'the crown "*by hereditary succession and by the good will and fidelity of the magnates,*" and is the first King of England *whose reign commenced before coronation* ; at his father's death he was in Palestine, and the baronage and commons swore fealty to him in his absence.

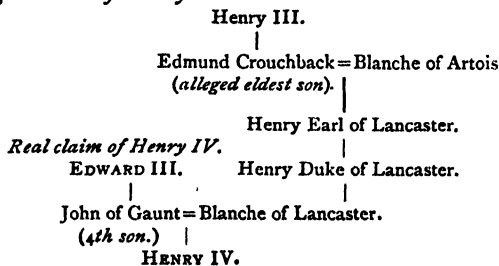
✓From this time hereditary succession became the rule, though it was still liable to be, and frequently was, altered by Parliament ; the "consent of the barons" was no longer mentioned, and the idea was gradually established that *the King never dies*, the throne descending to the successor at the moment of the holder's death. On the deposition of Edward II., his son EDWARD III. was chosen, and was in his turn succeeded by his grandson, Richard II., a minor, who is expressly declared by Archbishop Sudbury to have succeeded *by hereditary right*. After the deposition of Richard, Henry IV. (son of John of Gaunt *fourth* son of Edward III.) was elected *by the voice of the people* ; Parliament settled the succession on him and on his heirs 1404 and confirmed it 1406 ; *the Lancastrian title was therefore purely Parliamentary*, though Henry showed his regard for hereditary right by claiming to be the lineal successor of Henry III. through his maternal ancestor, Edmund Crouchback, *the alleged elder brother of Edward I.*¹

Edward III.
Richard II.

Henry IV.

Lancastrian
title.

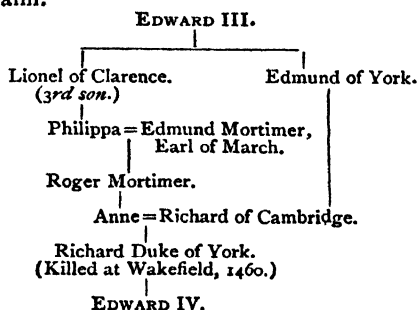
¹ *Alleged claim of Henry IV.*



The House of York, descended on the maternal side Yorkist title. from Lionel of Clarence, *third* son¹ of Edward III., claimed on the principle of indefeasible hereditary right²; in 1460 Parliament compromised the matter by giving the unpopular Henry VI. a life interest only in the crown, and declaring Richard Duke of York heir. On the deposition of Henry, at the end of the same year, Richard's son EDWARD was Edward IV. elected King by the popular voice, Richard himself having been killed in battle in the meantime. RICHARD III. managed to supplant his nephew Richard III. EDWARD V., and to obtain a kind of election by the people; alleging that his brother Edward IV. was at the time of his marriage with Elizabeth Woodville, Lady Grey, betrothed to Lady Eleanor Butler, and that his children were therefore illegitimate; whilst the children of the Duke of Clarence were debarred from the succession by their father's attainder. Parliament entailed the crown on his heirs, 1484. HENRY VII., who suc- Henry VII. ceeded as head of the Lancastrian party, with no real claim but that of a conqueror, obtained a Parliamentary title "before which," says Mr. Hallam, "the pretensions of lineal descent were to give way," and the crown was entailed on

¹ The second son, William of Hatfield, b. 1336, died young.

² Yorkist claim.



Henry VIII. and
his children.

"the heirs of his body for ever.¹" The succession was frequently altered by Parliament at the desire of Henry VIII.; in 1534 it was entailed on the King's heirs male, and in default on the Princess Elizabeth; in 1536 Mary and Elizabeth were declared illegitimate, and the crown was settled on the issue male of Henry and Jane Seymour or, in default, on the issue of any future wife; *by this act Henry was also empowered to devise the succession by will.* In 1544 Mary and Elizabeth were again conditionally placed in the entail.² Henry, in accordance with the Act of 1536, devised the crown, in the event of issue failing his three children, to the descendants of his *younger* sister Mary, Duchess of Suffolk; but, in distinct opposition to this, on the death of Elizabeth, in whose reign it was made treason to deny the right of the Queen and Parliament to limit the succession, JAMES VI. of Scotland, great grandson of Henry's *eldest* sister Margaret, was declared King by the Council and by "the will of the people"³; he was in 1604 recognised by

James I.

¹ Tudor claim.

EDWARD III.

John of Gaunt=(3rdly) Catharine Swynford.

John Beaufort,
Earl of Somerset.

John, Duke of Somerset.

Margaret Beaufort=Edmund Tudor, Earl of Richmond.

HENRY VII.=Elizabeth of York, daughter of
EDWARD IV.

HENRY VIII.

² The influence of the hereditary principle may be seen in the lack of national sympathy for Lady Jane Grey.

³ Stewart claim.

HENRY VII.

Margaret=JAMES IV. of Scotland.

JAMES V.

Mary Queen of Scots=Earl Darnley.

JAMES I. (VI. of Scotland.)

Parliament as "lineally, justly and lawfully next and sole heir of the blood royal of this realm." It was James' knowledge of the defect in his Parliamentary title which induced him to magnify "still more than from his natural temper he was prone to do the inherent rights of promogenitary succession as something indefeasible by the legislature."¹ Parliament, however, still asserted its power to alter the succession, *e.g.*, the Exclusion Bill aimed at James, Duke of York, which was passed by the Commons but thrown out by the Lords, Nov., 1680. In 1688 Parliament declared that JAMES II. had abdicated the Government by his unconstitutional acts, and that the throne was thereby vacant. WILLIAM and MARY of Orange were named King and Queen, and the succession settled on the heirs of Mary's body, in default of such issue on the Princess Anne of Denmark and the heirs of her body, and failing them on the heirs of the body of William III. On the death of the Duke of Gloucester, son of the Princess Anne, and heir presumptive to the throne, (1700), it became necessary to legislate afresh for the settlement of the Protestant succession, and in 1701 was passed the famous *Act of Settlement*, which entailed the crown on the Electress Sophia, Duchess Dowager of Hanover, and the heirs of her body *being Protestants*, passing over the children of James II; this Hanoverian succession was confirmed in 1707, and the crown has ever since descended without

Exclusion Bill,
1680.

James II.

William and
Mary.

Settlement of the
Succession.

Act of Settlement,
1701.

¹ Until this Act was passed James was in the eye of the law an usurper. Henry had power given him by Parliament to limit the succession by will, and he devised it to the heirs of his younger sister, Mary Brandon, before those of his elder sister Margaret.

² Hallam, Const. Hist., i., 294.

interference from Parliament in a strictly hereditary line.¹ Its hereditary character at the present day is firmly established, but the throne is in reality held, not from any claim of blood, but in accordance with the Act of Settlement as expressing the national will and the power of the legislature.²

In addition to the right of election the Witan had also the power of

Deposition.

Deposition,

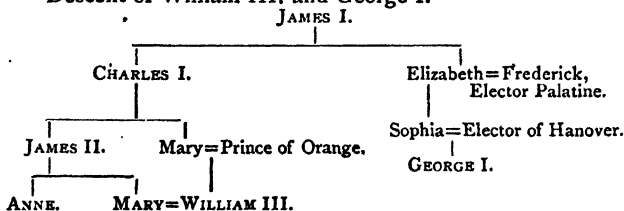
Which was exercised to remove a King for incapacity or bad government.

Instances in early times.

Instances, before the supremacy of Wessex,— not connected with conspiracies or rebellions: *in Northumbria*, ALCRED, 774, ETHELRED, 779, EARDWULF, 808.

Instances in Wessex: SIGEBERT, 755 (deposed from all his kingdom except Hampshire); ETHELWULF, 857; EDWY, 957 (deposed by part of his subjects, the Mercians and Northumbrians, in favour of his brother Edgar); ETHELRED II., deposed 1013, restored 1014; HARTHACNUT 1037, deposed in Wessex in favour of his half-brother Harold Harefoot,³ who had ruled North of the Thames.

¹ Descent of William III. and George I.



² "The real benefits of hereditary succession," remarks Sir G. C. Lewis, "are that it prevents the constant existence of intrigues, cabals, factions, and party measures, for the sake of obtaining the first place in the state, and saves the community from ever being disturbed by a contest for the possession of the highest honours."

³ Harthacnut subsequently succeeded Harold 1040.

Instances in later times of deposition by Parliament, In later times.

1327, six articles were drawn up against Edward II. by Bishop Stratford, mentioning several points in which he had broken his coronation oath and declaring him unfit to govern. Parliament renounced their homage through their spokesman, Sir W. Trussel, and Edward was deposed and shortly afterwards murdered.

1399, RICHARD II. was forced to offer to resign the crown, and, thirty-three articles having been drawn up against him, he was deposed by Parliament "as useless, incompetent, and altogether insufficient and unworthy."

The case of HENRY VI., deposed by the Yorkists 1460, is not in point; his deposition was not the act of the nation but of an aristocratic assembly of the baronage, "he was set aside on the claim of a legitimate heir rather than deposed for incompetency or misgovernment," the plea being that he had violated the Parliamentary agreement of 1460 by attacking Richard of York.

1688, it was declared by Parliament that JAMES II., having endeavoured to subvert the Constitution and having withdrawn from the kingdom, had *abdicated* the Government, and that the throne was thereby vacant. This practically amounted to a deposition; in fact the Scotch Parliament actually substituted *forfeited* for *abdicated*.

The Royal power and prerogative.

The Anglo-Saxon Kings were personal, not territorial. Their prerogatives² were not large, consisting

Royal prerogative under Anglo-Saxon Kings.

¹ Stubbs, Const. Hist., iii., 191.

² Mr. Hallam defines prerogative, (whose history, says Canon Stubbs is "one long story of assumption and evasion") in its old sense at least as "an advantage obtained by the crown over the subjects, in cases where their interests came into competition, by reason of its greater strength."

Norman Kings.

merely of special privileges as regards wergild, the revenue, purveyance, jurisdiction, right of pardon, and the like. Under the Norman Kings the royal prerogative was extensive and undefined; the royal power had increased greatly owing to

1. *The energetic character of William I. and Henry I.*

2. *The growing wealth of the crown;*

3. *The growing power of the King's court presided over by the royal officers;*

4. *The union of the crown and the people against the feudal barons;*

whilst by the introduction of feudalism the King became the lord of the land, (ch. vii.). The King practically did what he found himself strong enough to do; he imposed what taxes he chose, theoretically with the consent of his council; he repressed lawlessness, and dispensed justice with a strong hand, by this means increasing his own power. The only real check on the despotism of the Norman Kings was the elective character of the succession, which caused them to conciliate the people by the issue of charters of liberties.

Angevin Kings.

The Angevin or Plantagenet Kings were most despotic. HENRY II., in whose reign the lawyer Glanville writes, "*Quod principi placuit legis habet vigorem*," by his whole policy aimed at the consolidation of his own power. Before his death the supremacy of the King was established, and he was the acknowledged head of the Legislature and Executive. RICHARD I. and JOHN marked their sense of the power of the crown by omitting to issue a Charter of liberties at their coronation, and the latter held ideas of absolutism, for which he was forced to sign *Magna Charta* (June 15th, 1215)

"the keystone of English liberty," and *the first actual limitation of the royal prerogative.*

Magna Charta is founded on the Charter of liberties of Henry I., in which the King had acknowledged the limitation of the royal power, and embodies many of the forty-nine Articles presented to John by the Barons. The most important articles are to this effect:—

1. That no scutage or aid, with the exception of the three ordinary feudal aids, shall be levied without the consent of Parliament.

2. That a Parliament of the whole kingdom shall be summoned in a regular manner for the imposition of aids.

3. That no freeman shall be imprisoned, exiled, or otherwise punished except by the lawful judgment of his peers or by the law of the land.

4. That justice shall not be denied or delayed to any one. (*See Appendix A.*)

In November, 1216, John's Charter was re-issued by the Earl of Pembroke with the omission of the clauses referring to taxation, the omission being due to the minority of Henry III., and to the recognition by his ministers that those clauses would deprive them of much of their power of raising money; it was stated that the suspension of the clauses was merely temporary, though, as a matter of fact, they were never restored. In 1217, another re-issue took place, with the omission of the Forest clauses, which were in the same year issued as a separate Charter, and with some additions, most important of which is a declaration of the King's right to levy *scutage* as in his grandfather, Henry I.'s time. This Charter also contains the germs of the Statutes *quia emptores* and *de religiosis*. In 1218 and 1223 the charters were confirmed, and in

Charters of
Henry III.,
1216.

1217.

1218, 1223.

1225.

1225, a fresh one was issued, important for two reasons:—1., it is said to be issued "*spontanea et bona voluntate nostra*," "which," remarks Canon Stubbs, "opened the way for a claim on the King's part to legislate by sovereign authority without counsel or consent"; 2., it contains the idea of connection between the redress of grievances, and the granting of supplies in its last clause, which is to the effect that the grant of a fifteenth is made in return for the concession of the Charter. Henry's incapable government led to many attempts at reform headed by the barons, notably 1237 and 1244; in

1253.

1253 the King, in return for a grant of money, again confirmed the Charters, but the misrule continued, and in 1258, at the Parliament of Oxford, the Barons exhibited a long list of grievances, chief of which were the illegal exactions of the royal officers. A Committee of Reform was appointed consisting of twenty-four members, twelve nominated by the King and twelve by the barons. This Committee which was subsequently charged with the duty of carrying out ecclesiastical reform "as they should see time and place," drew up the following scheme of government. Fifteen Counsellors were to act as the permanent advisers of the crown and were to be chosen as follows: the twelve members of the original twenty-four, who had been nominated by the Barons, chose two of the nominees of the crown, (the Earl of Warwick and John Mansel), the twelve chosen by the King selected two of the Baronial twelve, (Roger Earl Marshal and Hugh Bigod); by these four the Council of fifteen was to be elected. Two other Committees were also to be appointed, one of twelve members, nominated by the Barons, to consult with

Committee of
Reform, 1258.

¹ Stubbs, *Sel. Charters*, 394.

the King's Council at the three annual Parliaments, and one of twenty-four members representing the nation, to consider financial matters in general, and aids to the King in particular. This scheme, known as the *Provisions of Oxford*, was formally annulled by the arbitration of Lewis of France at the *Mise of Amiens*, 1264; whilst its total failure to accomplish its mission of reform led to the *Provisions of Westminster*, 1259 (re-issued 1262 and 1264), by which a speedy remedy was proposed by the Barons for their grievances, the chief of which related to local extortion and misgovernment. In 1264, in spite of the decision of Lewis of France in favour of Henry, it was proposed that, provisionally at least, the King should be advised by a Council of nine, nominated by three electors; in 1266, however, was issued the *Dictum de Kenilworth*, in which the royal prerogative was again upheld, though the necessity of the King ruling according to law was also recognized. (Appendix A.)

Provisions of Oxford.

Provisions of Westminster.

Dictum de Kenilworth.

Under EDWARD I. the power of Parliament first began to be recognized, though the King managed to keep the royal power undiminished.¹ Edward occasionally imposed taxes and aids by his own authority in direct contradiction to Magna Charta, especially during his various wars, but was compelled in November, 1297, to sign at Ghent the famous *Confirmatio Cartarum*, due to the exertions of Archbishop Winchelsey, and to the firmness of Humphrey Bohun, Earl of Hereford, and Roger Bigod, Earl of Norfolk. The *Confirmatio Cartarum* confirmed in explicit terms the great Charter of 1215 and the Charter of the Forest, renounced as precedents "the aids, tasks, and prises" previously

Edward I.

Confirmatio Cartarum.

¹ It was however, as Canon Stubbs remarks (Const. Hist., ii., 291) "the royal power *in* and *through* the united nation not as against it that he designed to strengthen."

taken by Edward, and promised that no future aids should be levied "saving the ancient aids and prises due and accustomed," but by the common assent of the realm and for the common profit thereof. The *Confirmatio Cartarum* was in French; there is another document in Latin differing slightly from the *Confirmatio* (which does not contain the word talliage), and known as the Statute *de tallagio non concedendo*; it is probably an *unauthorized abstract* of the *Confirmatio*, though referred to as a Statute by the *Petition of Right*, 1628, and held to be so by the Judges, 1637. In March, 1299, Edward was obliged to confirm the Charters of the Forests; a reservation "*Salvo jure coronæ nostræ*" evoked such hostility that a fresh confirmation, with the omission of the obnoxious words, was made two months later. In March, 1300, were issued the *Articuli Super Cartas*, a supplement to the *Confirmatio Cartarum*, dealing with certain abuses, such as purveyance, ordering the appointment of Commissioners to enquire into the administration of the forests and into infringements of the charters, though the rights of the prerogative were reserved; and making various legal reforms. The charters were finally confirmed by Edward in return for a money grant, at the Parliament of Lincoln, 1301.

De tallagio non concedendo.

Articuli Super Cartas.

Final Confirmation.

Edward II.

71 The Lords Ordainers.

EDWARD II., the only despicable Plantagenet, drew upon himself in 1309 the necessity of assenting to eleven articles for the redress of abuses of purveyance, excessive imposts, delay of justice, depreciation of the coinage, and the like. In 1310, by the forced consent of the King, twenty-one Lords Ordainers were appointed to frame ordinances for 'the advantage of the Church, the King, and the people.' The composition of this body

was as follows :—two earls were elected by the bishops, two bishops by the earls ; the four thus chosen elected two barons, and these six chose fifteen others. Six ordinances were issued, August, 1310, and supplemented in 1311 by thirty-five others. These ordinances, which greatly checked the royal power, struck a fatal blow at the royal favourite, Piers Gaveston, abolished new customs, confirmed charters, forbade the King to make war, quit the realm, or alter the coinage, without the consent of the baronage in Parliament, asserted the right of appointing the King's ministers in Parliament, and provided that frequent Parliaments should be held. In January, 1316, the ordinances were renewed, but were repealed, 1322, by the influence of the Despensers, as "prejudicial to the estate of the crown." From this time the kingdom was virtually ruled by the Despensers, until a national combination, with the self-seeking Isabella at its head, deposed the King, January, 1327. (p. 13).

Under EDWARD III. the power of the crown Edward III. was maintained, although frequent and successful attempts were made by the Commons throughout the reign to assert their right of restriction. The King's first act was to confirm the Charters and to legislate against the unconstitutional exercise of royal power, whilst, in 1340, his right to exact talliage without the consent of Parliament was abolished. In 1341 Edward most illegally declared a Statute, providing for the appointment of ministers Edward annuls a Statute 1341. by the Kings in Parliament, void, and it was formally repealed by Parliament 1343. In 1347 Edward imposed a heavy tax on wool, but all such exactions were declared illegal by statutes of 1362 and 1371. Edward, however, still continued to impose them

occasionally, and in 1377 asserted a kind of right to do so by declaring that he would only resort to them when absolutely necessary.

Richard II.

For some time RICHARD II.'s attempt to rule as an absolute King was favoured by the subserviency of Parliament, which, in 1391, declared that "the royalty and prerogative of his crown should ever remain intact and inviolable;" and in 1397, *Haxey*, who had introduced a bill for the regulation of the royal expenditure, was found guilty of treason. Richard continually resorted to forced loans, and compelled people to sign blank cheques, as a means of escape from persecution; his arbitrary government and assertion of the absolute nature of the prerogative, led to his deposition on thirty-three charges of injustice, extortion, and general misgovernment; one of the articles accusing him of having said "that his laws were in his own mouth, and often in his own breast, and that he alone could change and frame the laws of the kingdom."

H^{is} deposition.

Checks on the King.

Temp. Henry IV.

The royal power was now checked by the necessity of *Parliamentary consent to legislation or taxation, and the growing idea of ministerial responsibility to the nation.* (p. 46).

Lancastrian Kings.

The Lancastrian Kings were deterred by their insecure title from proceeding to any unconstitutional lengths. Though Henry IV., and his successors, had considerable power as Dukes of Lancaster, Parliament gradually increased its influence, and established the right of inquiry into all public abuses, and of controlling the royal administration, whilst in 1408 it made a violent attack on the prerogative in a petition of thirty-one articles, demanding the removal of evil counsellors, the appropriation of the ordinary revenue to the payment of the King's household expenses and

Petition of 1408.

debts, the regulation of purveyance, and the abolition of various abuses. The constitutional nature of the Lancastrian rule is borne witness to by Sir John Fortescue in his treatises *de laudibus legum Angliæ* and *de natura legis naturæ*, where he describes the King of England as *rex politicus* who cannot alter the laws or lay impositions on the people against their will; in fact, he remarks 'the King exists for the sake of the kingdom, not the kingdom for the sake of the King.'¹

Fortescue's
opinion.

Under the Yorkist Kings, EDWARD IV. and RICHARD III., the baronial and Parliamentary opposition was so much weakened by the disturbances of the previous years, that the power of the crown was practically unchecked. There were during this period occasional instances of the use of the *Suspending and Dispensing power* and of the exaction of *Benevolences*. (ch. iv.)

Yorkist Kings.

At the accession of HENRY VII. there were certain definite checks on the power of the King, which are thus described by Mr. Hallam:—

Checks on the
royal power.
Temp. Henry
VII.

1. *No new tax could be levied without consent of Parliament.*

2. *No new law could be made without the same consent.*

3. *No committal to prison could take place without a legal warrant specifying the offence; and the trial must be speedy.*

4. *Criminal charges, and questions of fact in civil rights, were decided by a jury.*

5. *The King's officers were held responsible to the nation, and could not plead in defence the King's order.* (p. 46).

In spite of these checks the power of the crown was much increased under the Tudors, owing to

The Tudors.

¹ See Stubbs, Const. Hist., iii. 241.

the strong character of the Sovereigns, the extermination of most of the baronial party, and the action of the Courts of Star Chamber and High Commission. HENRY VII. made many illegal exactions by Benevolences and excessive fines.

Henry VII. HENRY VIII. ruled as a despot over a Parliament so subservient that in 1539 an Act was passed giving the King's proclamations the force of law (ch. iv.); his power was also greatly increased by his position as head of the Church of England, whilst his coffers were filled with the spoils of the Monasteries. Henry, however, in spite of his despotism, ruled according to law, and, as Lord Bolingbroke remarks, "by applying to his Parliaments for the extraordinary powers which he exercised, owned sufficiently that they did not belong of right to the crown." Under MARY forced loans were exacted and Proclamations made, whilst an Act was passed declaring the prerogatives of a Queen identical with those of a King. Parliament was also controlled by the creation of rotten boroughs. ELIZABETH denied all independence to Parliament (ch. iii), declaring that she would not have her prerogative "argued nor brought in question." She was practically supreme, but, although persons were occasionally illegally committed to prison and unjustly tried, she ruled on the whole wisely, and without any great violation of constitutional liberty, and *Hooker*, writing towards the close of her reign, says of the royal power "*Lex facit regem*; the King's grant of any favour made contrary to the law is void; what power the King hath he hath it by law, the bounds and limits of it are known." During the later years of the reign, however, Parliament began to reassert its power, and in 1601 won a great victory on the subject of *monopolies* (ch. v.)

Hooker's view
of the royal
power.

With the Stewarts, however, came in the doctrine of *Divine Right* and passive obedience. JAMES I., from his natural inclination, and from the defect in his parliamentary title, held that hereditary right was expressly sanctioned by heaven; that the King was in consequence absolute, his rights inviolable, and the constitutional limitations of the prerogative, as Lord Macaulay says, "merely concessions which the Sovereign had freely made, and might at his pleasure resume." This doctrine was unknown in the earlier stages of English history, when succession in accordance with rules of primogeniture had been by no means universal. The theory of Divine Right, as promulgated by James I., was warmly taken up by the King's party, and by the high-churchmen, who aimed at increasing the power of the crown and gaining its support for themselves. By the Canons of 1604 the necessity of passive obedience was insisted on; in *Dr. Cowell's "Interpreter,"* published in 1610, the doctrine was so strongly upheld as to give great offence to Parliament, and to compel James to order the suppression of the book. In 1628 *Dr. Mainwaring* was impeached for preaching in favour of absolutism and heavily fined; as a reward, the King made him Bishop of St. David's. In the reign of Charles II. a treatise was published by *Sir Robert Filmer*, the advocate of *active* obedience, in which he maintained that Kings are absolute by divine right, "and are not answerable to human authority." These ideas were taken up by the Tory party, and especially by the University of Oxford, but gradually disappeared after the Revolution of 1688, and in 1701 an oath was imposed on the clergy and certain officials by Parliament that William III. was "the lawful and rightful King."

Divine Right.

Dr. Cowell.

Dr. Mainwaring.

Sir Robert
Filmer.

Stewart Kings.

Subserviency of
the Judges.

James I.

Charles I.

Darnell's Case.

Holding these ideas the Stewarts claimed an unlimited prerogative, and at once attempted to govern arbitrarily and without Parliament; they were aided by the *Court of Star Chamber* (ch. ii.) and by the subserviency of the judges (*e.g.*, in *Bates' case* (ch. v.) and the case of *Ship money* (ch. v.) In 1610, however, the judges declared that the King had no prerogative beyond that which the law of the land permitted him to enjoy. In 1616, on the judges refusing to delay the administration of justice in the *case of Commendams*, in accordance with James' order, they were sent for by the King and compelled to ask pardon on their knees, promising amendment in the future. *Coke* alone attempted to vindicate their action, and was in consequence dismissed from the Chief Justiceship. From this time James I. was absolute in the Law Courts, and he informed his Parliament that "it was sedition to inquire what a King could do by virtue of his prerogative." His hatred of the Puritans and Non-conformists whom he regarded as subversive of monarchy, sprang also from his theory of absolutism. He was always needy and always extortionate; proclamations were rife, the Dispensing power was freely used, (ch. iv.) and money was illegally raised by forced loans, benevolences, monopolies, and the sale of honours. CHARLES I., following in his father's steps, and attempting to rule without Parliament, was always in want of money, which had to be obtained illegally. In 1627 the liberty of the subject was infringed by the imprisonment of *Sir Thomas Darnell* and four others for refusing to contribute to a general loan; they sued out their writs of *habeas corpus* (ch. vii.); in reply the Warden of the Fleet asserted that they were imprisoned by the *special commands of the*

King, and Sir Nicholas Hyde, chief justice, gave judgment for the crown on the point. The prisoners were shortly afterwards released by the King's order, but the country had been alarmed. In 1628 Charles was obliged to assent to the *Petition of Right*, and from 1629—1640 ruled without a Parliament, having recourse to various means of raising money, *e.g.*, *exacting tonnage and poundage on his own authority, sale of monopolies, revival of the forest laws, distraint of knighthood, ship money*, and the like. Many abuses, such as the Star Chamber, were swept away by the Long Parliament, and in 1660 CHARLES II. surrendered the feudal rights in return for a fixed annual sum. Towards the end of his reign, Charles, by the aid of the judges, managed to increase the power of the crown by confiscating the charters of the boroughs, and only restoring them on conditions which rendered the return of court nominees at the Parliamentary Elections certain. JAMES II. at once began to act on the idea of absolutism; in 1685 he levied customs by Proclamation before they had been granted by Parliament; he procured a judicial decision in favour of the Dispensing power (ch. iv.), and by various attempts to subvert the constitution lost the throne.

Charles's
Exactions.

Charles II.

James II.

By the *Bill of Rights*, 1689, a lasting check was put upon the abuse of royal power; the exercise of the Suspending and Dispensing power without consent of Parliament, levying money by pretence of prerogative without a Parliamentary grant, and keeping up a standing army without Parliamentary authority were declared illegal, and the respect of Parliamentary privileges was claimed (ch. iii.) This check was strengthened by the *Act of Settlement*, 1701, which provided against packing Parliament

Bill of Rights.

Act of Settlement.

with placemen, declared the royal pardon invalid in cases of impeachment, and secured the independence of the judges, who were not to be removed from their office except upon the address of both Houses of Parliament.

George I.
George II.
George III.

GEORGE I. and GEORGE II. had little personal influence and little national sympathy, but GEORGE III., "the consecrated obstruction," who sought to rule as a national sovereign, made such progress towards re-establishing the influence of the crown, by his dictation to Lord North, and his attempts to be his own unadvised minister, that in 1780 Mr. Dunning moved and passed in the House of Commons the famous resolution that that influence "had increased, was increasing, and ought to be diminished." Although Parliamentary Government has existed since the Revolution of 1688, the crown has retained much of its influence, owing to its position as the head of society, to its powers of patronage, and to that love of monarchy which is the characteristic of the English people. The sovereign has at present many legal prerogatives, most of which are practically vested in the ministry, such as the power of summoning, proroguing and dissolving Parliament at pleasure, of refusing assent to any Bill (practically obsolete, ch. iii.), of making peace or war, of dealing with foreign nations by making treaties and receiving and sending ambassadors, of pardoning offenders after conviction, and of creating peers. Many of the feudal and fiscal prerogatives of the crown, such as purveyance, coining, regulation of markets, and the like, have been surrendered. The sovereign is, in fact, the head of the Church, the army, the law, the fountain of justice, mercy and honour, and has, formally at any rate, the supreme executive power

Legal prerogatives of the crown.

as well as a co-ordinate legislative power with the Houses of Lords and Commons.

Regencies which are a natural sequence of Regencies hereditary kingship, may be rendered necessary, 1, *by the King being a minor*; 2, *by his being ill*; 3, *by his being mad*; 4, *by his being absent from the realm*. Thus William I., during his absence in Normandy, left as regents his half-brother, Odo, Earl of Kent, and ~~Roger Fitzosbern~~, Earl of Hereford. The office of regent in early times usually fell to the Justiciar in the event of the sovereign's absence. The instances of regencies in English history are:—

(1.) 1216. William Marshall, Earl of Pembroke, was, owing to the minority of Henry III., chosen by the barons *rector regis et regni*; with him were the legate Gualo, and Peter des Roches.

(2.) 1272. Walter Giffard, Archbishop of York, Edmund Earl of Cornwall, and the Earl of Gloucester were appointed by the Barons to be the ministers and guardians of the realm until the return of Edward I. from Sicily, where he was on his father's death.

(3.) 1327. At the accession of Edward III., a minor, Parliament appointed a regency of four bishops, four earls, and six barons headed by Henry Earl of Lancaster.

(4.) 1377. Richard II. was a minor, and though no regent was appointed, a council of nine was named by the barons and frequently modified by Parliament, which had the real control of affairs.

(5.) 1422. Henry V. at his death named the Duke of Gloucester regent; subsequently, however, the peers, in the name of the infant King, Henry VI., appointed the Duke of Bedford, "or in his absence

beyond the sea, the Duke of Gloucester, to be the protector and defender of the kingdom and English Church and the King's chief counsellor." Sixteen counsellors were subsequently added by Parliament which thus set aside Henry V.'s will and established that "the sole right of determining the persons by whom, and fixing the limitations under which, the executive Government shall be conducted in the King's name and behalf, devolves upon the great council of Parliament."¹

(6.) 1454. Owing to Henry's mental infirmity Richard Duke of York was appointed regent; the King recovered and dismissed him.

(7.) Nov., 1455. Henry had a relapse and the Duke of York was again appointed as his lieutenant, with the understanding that he should hold his office, not as before, during the King's pleasure, but "until he should be discharged by the Lords in Parliament." It was at this time recognised that the King had not the prerogative of appointing a regent during the minority of his successor, and that neither the heir presumptive nor any one at all is entitled to act without the appointment of Parliament.

(8.) 1483. On the accession of Edward V. Richard Duke of Gloucester was appointed regent by a council of nobles, prelates and chief citizens.

(9.) 1547. In accordance with a statute of 1537 Henry VIII. appointed sixteen executors as a regency during the minority of Edward VI.; they chose the Earl of Hertford as Protector of the kingdom.

(10.) 1751. A Regency Act passed on the death of Frederick, Prince of Wales, made the Princess Dowager of Wales regent in the event of any of

¹ Hallam, *Mid. Ages*, ii., 319.

her children succeeding under the age of 18; the Act also nominated a council of regency; with power to the King to add four more.

(11.) 1765. On George III. suffering from a severe illness a Bill was passed appointing a council of regency and defining their duties; the King was empowered to nominate as regent either the Queen, the Princess Dowager of Wales, or any descendant of George II.; the name of the Princess was only inserted after considerable opposition from the Ministers, especially Lords Halifax and Sandwich.

(12.) 1788. George III. became insane, and Fox upheld the right of the Prince of Wales to be regent; Pitt maintained the right of Parliament to make the appointment; a Regency Bill was brought in, 1789, and a great discussion ensued, Lord Thurlow declaring that he knew of no office of regent; the King, however, recovered.

(13.) 1810. George III. again became insane, and the Prince of Wales was appointed regent; the Bill was passed June, 1811, and the royal assent given by commission on a resolution of Parliament. The regent's power was limited; he was not, for twelve months, to create peers, nor grant offices and pensions, except during pleasure.

(14.) 1830—1. In the event of the Princess Victoria coming to the throne under the age of 18 the Duchess of Kent was to be regent.

(15.) 1837. Provision was made for the carrying on of the Government by Lords Justices in the event of the Queen's decease whilst the heir (the King of Hanover) was abroad.

(16.) 1840. In the event of a child of the Queen succeeding under the age of 18 the Prince Consort was to be regent.

Allegiance.

Allegiance or "the true and faithful obedience of the subject due to the sovereign" is of two kinds :

(1) *Natural, i.e.*, the allegiance due from persons born in the dominions of the sovereign ; formerly this was perpetual, but by the *Naturalisation Act* of 1870 a British-born subject may renounce his allegiance by becoming a naturalised subject of a foreign power.

(2) *Local* due from aliens during the time they are resident only.

Legislation on
the subject.

In 1552 the children of the King or his subjects born abroad were declared natural-born subjects ; in 1581 it was made high treason to attempt to withdraw subjects from their allegiance.

Bretwaldas.

Bretwalda (*Breotan* to distribute, *i.e.*, 'widely ruling' with a sense of undefined superiority¹) was a name given in Anglo-Saxon times to Kings who had acquired some sort of supremacy over their neighbours ; the nature of this supremacy is doubtful, but the title probably indicates, as Mr. Freeman says, early attempts at uniting the whole of England under one sovereign, and was assumed by a King in virtue of personal or territorial power. That the power was definite is shown by Ethelbert of Kent granting to St. Augustine a safe conduct *over all England*.

Queen Consort.

Queen Consort, (*Cwen*, the wife) at first oc-

¹ Sir F. Palgrave refers the title to a Roman origin and to the idea of Imperialism. Mr. Kemble says the *Bretwalda* was an elected head, while Dr. Lingard tries to establish a regular line of *Bretwaldas*. There were eight altogether—
 Ella of Sussex, *circ.* 477—510, *Bretwalda*, 492.
 Ceawlin of Wessex, 560—593, " *circ.* 584.
 Ethelbert of Kent, *circ.* 565—616, " *circ.* 589.
 Redwald of East Anglia, *circ.* 593—620, " *circ.* 617.
 Edwin of Northumbria, 617—633, " 624.
 Oswald, " 633—642.
 Oswy, " 642—670.
 Egbert of Wessex, (first *rex Anglorum*), 802—839.

cupied a high position, owing to the respect in which all Teutonic nations held their women, though after the murder of her husband, Brihtric of Wessex, by Edburga (802), the title of Queen was abolished in Wessex, that of *hlæfdige* or lady being substituted for it, with a great diminution of privilege. Queen Consorts have usually been crowned from the earliest times, though the ceremony was omitted in the case of Queen Caroline, wife of George IV. They had various privileges such as protection by the Statute of Treason, the possession of cities as private property, (*e.g.*, Exeter belonged to Emma, wife of Ethelred II.), and the right to *Queen Gold*, or a mark of gold for every hundred marks of silver paid to the King; this due, mentioned in Domesday as *Gersumma reginæ*, was claimed as late as the time of Charles I. by Henrietta Maria, who, however, surrendered it in consideration of a sum of money, 1635.

The *Queen Regnant* enjoys exactly the same prerogatives and privileges as a King; this was settled by a statute of Mary, the first Queen Regnant of England, April, 1554, which provides that "the regal power of the realm is in the Queen's Majesty as fully and absolutely as ever it was in any King."

CHAPTER II.

THE COUNCIL AND COURTS.

King's Council
Origin.

Origin. In Anglo Saxon times there existed a body of advisers of the crown distinct from the general assembly of the *Witan*; these advisers were, as in later times, the holders of offices entailing proximity to the King's person; the *bower thegn*, the *dish thegn*, and the *horse thegn*.

History to Henry III.

History to
Henry III.

After the Norman Conquest this body of counsellors continued to exist as a committee, or inner circle of the national council, *commune concilium*, and was known as the *Ordinary*, *Permanent*, or *Continual Council* (*Concilium ordinarium*), at first so closely connected with the national council as to be hardly distinguishable from it. The King's Council gradually assumed a distinct position *owing to its existence being perpetual*, and to its members being available for consultation at any moment, instead of only at three stated periods in the year, as in the case of the national council. Those members were at this time the permanent officials of the state and household, whose necessary residence at and about the court, by reason of their office, facilitated consultation, *i.e.*, the Justiciar, the Treasurer, the Chancellor, the Marshal, the Steward, the Chamberlain, the Constable, the Butler (ch. vii.); sometimes, also, minor officials, such as the Chancellor of the Exchequer and the King's Sergeant were present, while certain bishops and barons, in addition to the two archbishops who sat in right of their position, were occasionally summoned.

The *powers* of this *Curia Regis*,¹ executive, legislative and judicial, were immense, co-extensive with those of the King, whose agent it was. In its judicial and financial aspect it gradually develops into the *Curia Regis* in its third sense, and the Courts of Common Law *temp.* Henry III. In 1178, Henry II. created the council a Court of Appeal from the decisions of the judges. From this time until the reign of Henry III., when the council assumes a more important position owing to its action as a Council of Regency during the minority, the King's Counsellors appear more in the light of personal than of official advisers; the history of this body is obscure, and its position barely recognised.

The Council from Henry III. to Henry VI.

History from
Henry III. to
Henry VI.

History. During the minority of Henry III., the royal council increased much in importance; its development continued under Edward I., and it tended, as was natural in that age of definition, to become a body totally distinct from the courts of law and from Parliament, with which it came into frequent collision. By the reign of Richard II., in which the first minutes of the council appear (1386), it had assumed a fairly permanent form; though the various stages in its growth cannot be accurately distinguished. In 1301, the King's counsellors are first mentioned by name, and during the same period an oath of secrecy and

¹It should be carefully borne in mind that the expression *Curia Regis* is used to denote:

1. The *Commune Concilium*.
2. The *Concilium Ordinarium*, or King's council, as here.
3. The judicial committee of the council, a later and narrower sense
4. The Court of King's Bench.

fidelity was made incumbent on all members. During the Lancastrian period, and especially in the reign of Henry VI., when it practically performed the functions of a Council of regency, the Council was at the zenith of its power.

Composition

Composition. Temp. Henry III. and Edward I. The State and Household officers, the two archbishops by prescriptive right, the judges, certain prelates, nobles, and other persons summoned as counsellors.¹ "When all these were called together it was a full council, but when the business was of a more contracted nature those only who were fittest to advise were summoned, the chancellor and judges for matters of law, the officers of State for what concerned the revenue and household."² Counsellors were required to take an oath of secrecy and fidelity, and to swear "to do justice honestly and unsparingly,"³ and by degrees the Council became a sworn and salaried body of advisers as distinguished from mere officials. Their proceedings were regulated by rules, passed at different times from the reign of Edward I. both in Parliament and in the Council itself. In 1404, at the request of Parliament, Henry IV. appointed as his council the Duke of York, the Earls of Somerset and Westmorland, six bishops, six barons, six knights, and another commoner; he named somewhat similar councils in the same way, 1406 and 1410. The council appointed by Parliament at the accession of Henry VI. was composed of the Protector (Bedford), the Duke of Exeter, five

¹ "It is still uncertain," says Canon Stubbs, (Const. Hist., ii., 258,) "whether the baronage generally were not, if they chose to attend, members ex-officio."

² Hallam, *Med. Ages*, ii., 269.

³ *Temp. Edward I.* Under Richard II. the oath was to keep secrecy and to advise the King to the best of their ability.

bishops, two barons, and three knights. In the reigns of Richard II. and Henry IV. the King's counsellors held their office for a year, but were shortly afterwards appointed for life, though they could be removed at the King's pleasure or at their own request.

Relations of the Council to Parliament.

Relations to
Parliament.

Temp. Henry III. The National Council endeavoured to obtain a control over the King's Council by appointing the Justiciar and other great officers (1244, 1258); as most of the members of the Royal Council were already in virtue of their nobility members of the National Council this would have practically made the *concilium ordinarium* a committee of the *commune concilium*¹; but this mode of appointment was only possible under a weak King; *e.g.*, by the Ordinances of 1311 the King is to appoint his ministers "with the counsel and consent of the baronage." Under Edward III. it was provided by a statute of 1341, *repudiated by the King in the same year*, that ministers were to be nominated in Parliament. In answer to a petition of the Commons in 1377 the chief officials were to be appointed in Parliament, during Richard's minority. Frequent petitions were subsequently presented to the King on the subject but he refused to listen to them. Under Henry IV., 1404, 1406, 1410, the whole of the royal Council was nominated in Parliament by the King at the request of the Commons; under Henry V. the cordial relations between the King and Parliament rendered this unnecessary; during the minority of Henry VI., and up to 1437, the council was appointed

Nomination of
ministers in
Parliament.

Henry IV.

Henry V.

Henry VI.

¹ In the 13th and 14th centuries the *concilium ordinarium* occasionally met with the magnates and Parliament forming the *magnum concilium*.

Statutes to
restrain the
Council.

absolutely by the Parliament; from 1437 onwards counsellors were appointed by the King. Parliament also endeavoured to control the growing power of the Council by imposing a stringent oath of office on the members, by the practice of impeaching ministers who acted unconstitutionally (ch. iii.), and by passing various acts for the regulation of the counsellors, *e.g.*, 1406 and 1424. It also claimed the right of fixing the amount of the salaries of the counsellors, 1406 and 1431.¹ During the reign of Edward III. frequent statutes were passed, at the request of the Commons, to restrain the arbitrary exercise of the Council's power, *e.g.*, 1331, 1352, 1354, 1362, 1363 and 1368 (5, 25, 28, 36, 37 and 42 Edw. III.), and in 1390 a petition was presented by the Commons praying that "neither the chancellor nor the King's council, after the close of Parliament, may make any ordinance against the common law or the ancient customs of the land or the statutes made heretofore or to be made in this Parliament."

* Under the Lancastrian Kings the relations between the Parliament and the Council were more cordial (*e.g.*, in 1406 the Commons expressed their "great confidence" in the King's council), owing to the fact that the Council was appointed and regulated by Parliament. From 1437, however, when Henry VI. began to appoint his counsellors absolutely, the Council comes into frequent collision with Parliament, which could only effectually attack the King's ministers by impeachment in individual cases.

¹ "The archbishops and Cardinal Beaufort had 300 marks, other bishops 200, the treasurer 200, earls 200, barons and bannerets £100, esquires £40."—STUBBS, *Const. Hist.*, iii., 251.

² Hallam, *Mid. Ages*, ii., 270.

*Powers of the King's Council.*¹

Powers.

From the time that the royal Council attained a recognised position these were very great, being practically co-ordinate with those of the King, the instrument of whose prerogative it was; whether King or Council was practically supreme depended on the character of the sovereign, *e.g.*, whilst Edward I. ruled the Council, the Council ruled Henry VI.

(a) *Executive.*² The Council was the agent of the King during the minorities of Henry III., Richard II., and Henry VI., and the absence of Henry V. in France; its executive powers were enormous; and it became in effect the wielder of the sovereign power. Under Henry VI. it was practically independent. Executive.

(b) *Legislative.* These were at certain periods considerable, *e.g.*, under Edward I. certain Acts are mentioned as passed with the consent of the Council as well as the usual formula of the consent of the magnates and commonalty. Such were the Statutes of Acton Burnell, 1283 (11 Edward I.), and Westminster I. 1285 (13 Edward I.). From this time, too, ordinances were frequently issued by the King in Council (ch. iv.) either at the request of the commons, or spontaneously; these ordinances Legislative.

¹ "The King could do nearly every act in his permanent Council of great men which he could perform when surrounded by a larger number of his nobles; except impose taxes on these nobles themselves."—DICEY, Privy Council, p. 11.

"Their work was to counsel and assist the King in the execution of every power of the crown which was not exercised through the machinery of the common law."—STUBBS, Const. Hist., iii., 252.

² Its functions "were primarily executive and it derived such legislative, political, taxative and judicial authority as it had from the person of the King."—STUBBS, Const. Hist., ii., 259.

were as binding on the people as statutes, from which they differed mainly in being of an executive and temporary nature (ch. iv.).

The Council exercised the power of altering statutes either by extending their provisions, as in the case of an Act relating to the criminal jurisdiction of justices of the peace, 1379, or by relaxing them, as in the case of the statutes of Provisors.

Deliberative.

(c) *Deliberative*. The Council was a permanent body of advisers ready to deliberate and give counsel on all political matters submitted to it by the King. It also received and answered numerous petitions, not only from private individuals but also from the Commons; in 1280, these petitions in council became so numerous that only the most important were reserved for the King and Council, the rest being sorted, and sent to the various courts.

Financial.

(d) *Financial*. The council was charged with the duty of auditing the royal expenditure, and of raising loans, more especially under the Lancastrian Kings, when power was granted them by Parliament to give security up to a certain sum varying from £20,000 to £100,000. The Council often raised money by arbitrary exactions, especially *temp.* Richard II.; and occasionally the Lords of the Council themselves lent large sums, or pledged their credit as security.

Judicial.

(e) *Judicial*.¹ It acted as a Court of Appeal

¹ The legislative powers of the Privy Council and the Appellate Jurisdiction of the House of Lords are due to the fact that originally the members of the *Concilium Ordinarium* or judicial body were also members of the great council or legislative body. As the House of Lords developed, there grew up a tendency to regard the judges and other members of the *Concilium Ordinarium* who appeared, as "assessors," and from Edward III. they ceased to attend, the Lords retaining the Appellate Jurisdiction.

(from 1178), and as a court of first instance for the trial of powerful offenders. After the *Curia Regis*, or judicial committee of the Council, had developed into the Courts of Common Law (*see below*) the Council lost much of its jurisdiction; some special judicial powers, however, it still retained, and it frequently showed a tendency to encroach, especially in criminal cases, on matters cognizable by the common law. Complaints were frequently made against the arbitrary exercises of the Council's judicial power, and their infringement of the liberty of the subject, during the reigns of Edward III. (1331, 1351, 1352, 1354, 1362, and 1368); Richard II. (1390, 1391, 1393); Henry IV. (1399); Henry V. (1416); and Henry VI. (1422).

During the disturbances of Henry VIth's reign, the cases in which the Council exercised its judicial power were almost always those of the more powerful offenders who could have been reached by no lesser court. The usual method of proceeding was by summoning the accused parties before the Council.

(f) *General*. The Council had also various General. general powers such as the regulation of commerce, and all matters connected with the King's prerogative.

Fortescue's Scheme of reform of the council.

Fortescue's
Scheme.

Sir John Fortescue, the great Lancastrian lawyer *temp.* Henry VI., propounded under Edward IV. a scheme of government reform for the benefit of the distressed nation; in this scheme the remodelling of the King's Council held a prominent place. The Council was to consist of twelve sworn laymen and twelve sworn ecclesiastics, together with four temporal and four spiritual peers, appointed annually for a year, all of whom were to receive

a fixed salary ; the President of the Council was to be named by the King. The scheme also contained regulations for the business of the Council, which was to be chiefly political, and provided that the counsellors should, when necessary, be assisted by the judges.

The Council
from Henry VI.

THE COUNCIL FROM HENRY VI.

History.

History. During the reign of Henry VI. the term *Privy Council* (*concilium secretum or privatum*) came into use, and was applied more especially to those paid and sworn counsellors who habitually attended and took the oath of secrecy.

Ordinary
Counsellors.

From the time of Henry VIII. up to 1641 *ordinary* counsellors existed, side by side with *privy* counsellors, the former having judicial powers only, not administrative, or at all events being consulted

Tudor period.

only on special occasions.¹ During the Tudor period the Council, though all powerful in the nation, was subordinate to the Sovereign, especially *temp.* Henry VIII., owing to the strength of the Tudor character, the collapse of the nobility after the wars of the Roses, and the introduction of commoners to the council board—a practice begun by Edward IV. and carried on by subsequent Kings. This subserviency continued under the first two Stewarts, who used the Council as the instrument of their illegal demands until 1641, when most of its powers were swept away (16 Car. I.). After the Restoration in 1660, all counsellors were sworn of the Privy Council, and though the *custom* soon arose that only those specially summoned should appear, the *right* of attendance lies with every individual member, *e.g.*, the Dukes of Argyll and Somerset attended without a summons on the

¹ Thus at the present day a member of the Council does not attend the meetings unless specially summoned.

death of Anne, 1714.¹ Charles II., finding the numbers of the Council unwieldy, formed the idea of governing by a Cabinet (*see below*), and though an attempt at re-organisation was made in 1679 by Sir William Temple (*see below*), the Council soon ceased to govern the country. The Privy Council was formerly dissolved *ipso facto* at the King's death, but, by an Act of 1707 (6 Anne c. vii.), continues now to sit for six months after, unless previously dismissed by the successor.

Composition.

Edward IV. introduced commoners into the Council, which, at the close of the reign of Henry VI., had been composed exclusively of magnates. This practice was continued by Henry VII., and the numbers of the counsellors, who in former days were about twelve, increased considerably. In 1553, in which year the Council was regulated by Edward VI., the numbers were forty, including two judges, and twenty-two commoners; this body worked in five committees, on the most important of which (the Committee of State of 20 members) sat seven commoners. Under James I. and Charles I. the members of the Council were chiefly peers. Charles II., finding the large numbers of the Privy Council an impediment to the transaction of business, entrusted Sir William Temple with the duty of re-organising the council, 1679. The council was to consist of thirty instead of fifty members, and was to be composed of the fifteen principal officers of state, sitting in virtue of their office, together with ten peers, and five commoners chosen by the King from the wealthiest and most powerful of his subjects. It was soon found, however,

Composition.

Temple's Scheme.

¹ Thus completely upsetting the plans formed by Bolingbroke in favour of the Pretender.

that this body was too large for the secrecy desired, whilst the different elements of which it was composed made it useless as an executive body, in which unity of action was indispensable.

Modern Privy
Council.

The Privy Council now consists of an indefinite number of members, none of whom, from long usage, attend without a special summons. The counsellors are appointed for life, though they can be removed by the King, or at their own request. By the Act of Settlement, 1701 (12 & 13 William III., c. ii.), it was provided that a Privy Counsellor must be a natural born subject.

Powers of the Privy Council.

Powers to 1641

1.—Up to 1641 these were enormous. Under the Tudors the Council, though subordinate to the sovereign, was very powerful; the King in increasing his Council's power was in reality increasing his own. The Council *temp.* Edward VI., at whose accession it acted as a Council of Regency to assist the executors appointed by the will of Henry VIII., was divided into five committees, the chief of which was the "Committee for the State," the real Privy Council; the other committees were composed of ordinary counsellors. Under the first two Stewarts the Council became the instrument of illegal demands and exactions.

During this period the Council arrogated to itself enormous judicial powers, which were exercised through the Courts of Star Chamber, the North, and the like (*see below*). By an Act of 1539, giving to the King's Proclamations in Council, the force of statutes (ch. iv.), it also obtained considerable legislative powers, for though the Act was repealed 1547, Proclamations continued to be frequently made.

Powers from
1641.

2.—In 1641, by the abolition of the Star Chamber,

most of the powers of the Council, except the political ones, were swept away. It retains the power, however, to inquire into all offences against the Government and to commit offenders, though those committed can claim their writ of *habeas corpus* (by 16 Car. I.) It also remained a Court of Appeal from the Admiralty and Colonial Courts, and in cases of lunacy, idiocy or divorce; in 1833 (3 & 4 Wm. IV.), these Appellate powers, together with those of the Commission of Delegates in ecclesiastical cases, were transferred to the Judicial Committee of the Privy Council: this Judicial Committee is now merged in the Supreme Court of Judicature, by the Act of 1873.

✓ From 1679, when Temple's scheme failed, the Council has ceased, as a body, to take any part in the administration, which is carried on by the Cabinet, though an attempt was made to revive its power, by a clause in the Act of Settlement, to the effect that "all matters and things relating to the well-governing of this kingdom, which are properly cognizable in the Privy Council by the laws and customs of this realm, shall be transacted there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same." This clause was repealed in 1705 (4 Anne). The Privy Council is still, however, in theory, the only instrument through which the sovereign can exercise his prerogative, being the only body of ministers recognised by law, and retains certain powers of legislation, *e.g.*, the issuing of Orders in Council. It works at the present day by means of committees, which have considerable powers in regulating matters under their control, *e.g.*—

The Board of Trade, established on its present Board of Trade,

basis 1786, as the successor of the Committee of Trade and Plantations (appointed by Charles II., 1668) and charged with the control of merchant shipping, trade, railways, and the like.

Judicial
Committee.

The Judicial Committee.

Committee of
Education.

The Committee of Education, appointed 1839.

Local Govern-
ment Board.

The Local Government Board, established 1871, in the place of the Poor Law Board, charged with matters concerning the public health, improvement of towns, and the like.

Privileges of a
Privy Counsellor.

The privileges of a Privy Counsellor consist now merely in the right to bear the title of Right Honourable; in 1487, however, (3 Henry VII.) it was made felony for any of the King's servants to conspire against the life of a Privy Counsellor; and in 1710 (9 Anne, c. xvi.), to assault a Privy Counsellor in the execution of his office was made felony without benefit of clergy; this was repealed 1828 (9 George IV.) In 1534 the Lord President of the Council was declared to have precedence next to the Lord Treasurer; this office "was revived by Charles II. in the person of Anthony, Earl of Shaftesbury."

Lord President.

Oath of Office.

✓The oath of a Privy Counsellor was to give advice according to the best of his discretion, and for the King's honour, and the public weal; to keep the King's counsel secret; to avoid corruption and to act in all things as "a good and true counsellor ought to do to his sovereign lord."¹

The Cabinet.

THE CABINET

✓Is theoretically an inner circle of the Privy Council, though practically distinct from it, but *as a body is not recognised by the law*,² its members deriving their position from the fact of

¹ Blackstone.

² Its members are never 'officially made known to the public, nor its proceedings recorded.'—STEPH. Com.

their being members of the Council. It was natural for the sovereign to select certain members of the Council as his more trusted and confidential advisers, and as early as the time of Charles I. we find the actual name Cabinet Council in use. Charles II., of whom Mr. Hallam says that "the delays and the decencies of a regular council, the continual hesitation of lawyers, were not suited to his temper, his talents, or his designs," finding the Council too large and unmanageable for "the secrecy and despatch which are necessary in many great affairs," elaborated the Cabinet system² on the precedent of the old committees, in spite of the opposition of Clarendon, the great upholder of the rights of the Council. After the failure of Sir William Temple's scheme the Cabinet system gradually developed, and the distinction of the Cabinet as the inner circle of the Council becomes clearly marked under William III.; and though at first it was customary for the measures proposed in that inner circle to be assented to and confirmed by the whole Council, this confirmation was more a matter of form than of utility. Under Charles II. and James II. the Cabinet was practically the King's friends bound to support him against the rest of the Council. Under William III. Cabinets were mixed, until, in 1693, the King, at the instigation of Lord Sunderland, declared for the Whigs; mixed Cabinets appear, however, in the reign of Anne, and the position of the Cabinet as a united ministry, standing and falling together, was not established until the reign of George II.³ Under the present system of minis-

¹ Const. Hist., iii., 185.

² *e.g.*, The "Cabal" Ministry of 1671.

³ From the reign of George I., who could not speak English, the King has never been present at Cabinet Councils.

terial government¹ "the Ministry is in fact a committee of leading members of the two Houses. It is nominated by the crown, but it consists exclusively of statesmen whose opinions on the passing questions of the time agree in the main with the opinions of the majority of the House of Commons." At the present time ministers do not wait to be dismissed, as in the last century, but resign together (*see* Party Govt., ch. iii.), and the Executive is now so closely connected with Parliament as to represent the nation.

Ministerial Responsibility

Is shadowed forth in the deposition of William Longchamp, Justiciar and Chancellor of Richard I. (1191), for abuse of power. During the minority of Henry III. the idea that the King can do no wrong, and that his ministers are responsible and should be chosen by Parliament, gained ground rapidly. In 1244 the barons tried to elect a Justiciar and Chancellor but were violently opposed by the King; the Ordinances of 1311 provided that the King's ministers should be appointed in Parliament, and in 1341 Edward III., in order to obtain a grant, was compelled to acquiesce in the Parliamentary appointment of ministers and judges; almost immediately afterwards, however, he declared the Statute null and void, and though frequent petitions were made by Parliament in favour of the system under Richard II. they were all refused by the King. Meanwhile, however, the idea of ministerial responsibility had been gaining ground, e.g., in 1326 Walter Stapledon the Treasurer was beheaded, and Robert de Baldock the Chancellor was imprisoned, for their share in Edward's bad government, and in 1376 Lords Latimer and

Ministerial
Responsibility.
William Long-
champ.

Growth of the
idea.
Temp.
Henry III.

Edward III.

Edward II.,
Walter Staple-
don, and Robert
de Baldock.

¹ Macaulay.

Neville were impeached by the Good Parliament.¹ The impeachment of Michael de la Pole, 1386, proved not only that ministers were responsible to the nation, but that they could not plead the King's approbation of their conduct as a defence for unconstitutional action. In 1624 Lord Middlesex, the Lord Treasurer, was impeached for neglect of duty. In 1626 Buckingham was impeached for bringing on the war with Spain, and only escaped by a dissolution. Strafford, 1640, and Laud, 1641,² both suffered for offences to the nation. Lord Clarendon's fall in 1667 was due to certain unconstitutional acts, such as advising the maintenance of a standing army and the sale of Dunkirk to the French. In 1674 Lord Danby was impeached for having attempted to sell the neutrality of England at the command of Charles II. By the Act of Settlement, 1701, an attempt was made to enforce a certain responsibility on the Cabinet by a clause to the effect that all resolutions should be signed by such members as consented to and advised them; this clause, however, was repealed before it became law. The plea of the Queen's orders failed to exonerate Lord Oxford when impeached in 1715 for his share in the peace of Utrecht, and the principle that a minister is answerable for "the justice, the honesty, and the utility of all measures emanating from the crown as well as for their legality" was clearly established. After the Revolution of 1688 the theory of ministerial responsibility gradually became a practice owing to the ability of ministers and the incapacity

Latimer and
Neville.
Michael de la
Pole.

Middlesex.

Buckingham.

Strafford.
Laud.

Clarendon.

Danby.

Oxford.

¹ The murder of Archbishop Sudbury the Chancellor, and Robert Hales the Treasurer by the rioters of 1381, which is sometimes regarded as an illustration of the growth of the idea, was more probably due to popular fury alone.

² Laud was impeached 1641, but not executed until Jan., 1645.

of sovereigns, like George I. and George II., and since the failure of George III. to lessen ministerial influence, the power of the crown, as exercised by responsible agents, has greatly increased; ministers are now answerable to Parliament not only for any unconstitutional conduct but for their whole line of policy, which, if not approved of by a majority of the House of Commons, entails a change of Government.

COURTS GROWING OUT OF THE PRIVY COUNCIL.

Star Chamber.

Court of Star Chamber (probably so called from the starred chamber of Westminster in which meetings of the *concilium ordinarium* was held as early as the reign of Edward III.¹), originated in the civil and criminal jurisdiction of the Council, and was in fact identical with the King's Council acting in its judicial capacity. After the establishment of the Court of Chancery this jurisdiction declined, but was revised by a statute of 1486 (3 Hen. VII. c. i.), which created a committee of the Council² a court with considerable judicial powers for the purpose of suppressing the evils arising from livery and maintenance. The members of the court were the Lord Chancellor, the Lord Treasurer, the Keeper of the Privy Seal, a bishop, a lord of the Council, and the two Chief Justices, "their power embraced the punishment of

Origin

¹ Other derivations are (1) from an Anglo-Saxon word signifying to steer or govern. (2) From the court punishing the *crimen stellionatus* or *cosenage* (Blackstone). (3) From a chamber in which the 'Starrs' or contracts of the Jews were kept, and which after their expulsion 1290, was devoted to the use of the Council.

² Two views are held about this statute (1) that it created the court of Star Chamber which had no previous existence; (2) the *better view*, that it merely confirmed and defined the jurisdiction of the Council which had as early as the reign of Edward III. sat in the *Chambre des Etoiles*.

'murders, robberies, perjuries and unsureties of all men living in as full manner as if the offenders had been convicts after the due order of the law.'¹ Subsequently, under Henry VIII.,² this committee became merged in the Council, and the Court of Star Chamber from that time may be regarded as the Council exercising arbitrary judicial power. The powers of Henry VII.'s committee were ^{Powers.} increased by Cardinal Wolsey and further regulated by a statute of 1529 (21 Hen. VIII.). The Star Chamber had at first considerable civil jurisdiction, ^{Civil jurisdiction.} e.g., in admiralty cases, in suits with aliens, in certain testamentary cases, and in suits between corporations.³ Towards the end of Elizabeth's reign it gradually confined itself to criminal jurisdiction and became an instrument of great oppression, especially under James I. and Charles I.; its method of procedure was by summoning the ^{Procedure.} accused person to appear (by writ of *subpœna*, or by summary arrest), and then by interrogations. The punishments, which were usually excessive and often illegal, were imprisonment, fines,⁴ mutilation, whipping and torture⁵; and though the court could not inflict capital punishment it often procured the condemnation of its victims by imprisoning and fining juries, e.g., the jurors who acquitted Sir Nicholas Throgmorton of treason, 1554, were

¹ Annals of England, p. 273.

² It is impossible to fix the date accurately; it was either in the latter part of Henry VIII.'s or in Edward VI.'s reign.

³ Hallam, Const. Hist., ii., 30.

⁴ A Mr. Alington was fined £12,000 for marrying his niece. Sir David Forbes, for abusing Lord Wentworth, £8000.

⁵ Prynne, Bastwick, and Burton for seditious writings were mutilated, fined £5000 each and imprisoned in Jersey, Scilly, and Guernsey.

fined and imprisoned. The Star Chamber took cognizance of every sort of misdemeanor and offence; and especially busied itself with cases of libel, and with the censorship of the press, 1585 (*see* ch. vii.). It became the practice for the Court to create offences by proclamation, and to punish them; this was declared illegal by Sir Edward Coke in the *case of Proclamations* (ch. iv.); under the Stewarts the Court was employed to enhance the arbitrary power of the crown, and the excessive fines inflicted by it were imposed for the express purpose of enabling the King to raise supplies without Parliament. The Star Chamber was abolished in 1641 by the Long Parliament, and, though a proposal was made after the Restoration to establish a similar court, the Council lost from this time almost all its judicial power.

Court of High
Commission

✓ *Court of High Commission.* In 1557 Mary granted a commission to certain church dignitaries to enquire into cases of heresy. "In this commission," says Mr. Hallam, "lies the germ of the High Commission Court."¹ In 1559 Elizabeth was authorised by the Act of Supremacy to appoint commissioners for the purpose of enquiring into heresies and other ecclesiastical questions. Its establishment as a permanent court dates from 1583, in which year forty-four commissioners were appointed, twelve being bishops, the rest privy counsellors, clergy, and civilians; three of these commissioners, one of whom must be a bishop, formed a quorum. ✓ Its duties were "to vindicate the dignity and peace of the Church by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies,

¹ "But the primary model was the inquisition itself."—HALLAM, *Cons. Hist.* i., 202.

schisms, abuses, offences, contempts and enormities.¹ Its powers were thus immense, and were exercised in a most arbitrary way, *e.g.*, the oath *ex-officio* administered to clergy suspected of Puritanical leanings, which consisted in a stringent and minute cross-examination on oath, from which there was no escape. In 1610 the Commons presented a remonstrance against the Court, but its abuse of power continued until it was abolished by the Long Parliament, 1641 (16 Car. I.) In 1686 an attempt was made to revive it in the Ecclesiastical Commission Court, which was declared "illegal and pernicious" by the Bill of Rights, 1689.

Ecclesiastical
Commission
Court, 1686.

Court of Requests, (a) originated *temp.* Richard II. as a lesser Court of Equity for the hearing of "all poor men's suits." Its members were the Keeper of the Privy Seal, and those members of the Council who happened to be present. It was abolished 1641, at which time it took cognizance of "almost all suits that by colour of equity or supplication made to the prince might be brought before him."²

Court of
Requests.
Equity.

(b) London, and certain other towns, had Courts of Requests, or Conscience, for the recovery of small debts, established in London, *temp.* Henry VIII., confirmed 1603 (1 Jac. I.), 1605 (3 Jac. I.), 1741; abolished for the most part 1846.

Debts.

The Council of the North, first established *temp.* Edward IV., was revived 1537 in consequence of the northern insurrection of 1536, known as the Pilgrimage of Grace. Its original objects were to maintain order in the northern counties, and justice was administered under a Lord President; by degrees however, it usurped a great deal of arbitrary jurisdiction, especially under Strafford and Laud, acting

Council of the
North.

¹ Blackstone.

² Ib.

as the Star Chamber of the north. It was abolished by the Long Parliament 1641. Its headquarters were at York.

Council of
Wales.

The Council of Wales, established 1543 (34 Hen. VIII.), to administer justice and maintain order in Wales and the four counties on the Welsh marches, Hereford, Gloucester, Worcester, and Shropshire. Under James I. complaints were made about the extent of the Council's jurisdiction in the border counties; and the judges decided that they were not under the Council's authority. It was practically abolished in 1641, and formally so 1689 (1 Wm. and Mary).

Court of Wards.

Court of Wards was established 1540 (32 Henry VIII. c. 46), to make certain enquiries, on the death of a tenant in chief, into the extent of his possessions, and the age of his heir, in order that the King's rights might be exacted. The Court, which frequently acted in an oppressive manner, was abolished by an Act of 1660 (12 Car. II.); it had previously fallen into disuse (from 1645). It was presided over by a Master.

Court of
Augmentation.

Court of Augmentation of the King's Revenue, was established 1536 (27 Henry VIII.) for the superintendence and regulation of the revenues of the lesser monasteries, which had been taken over by the crown. It was a Court of Record,¹ and was presided over by a Chancellor. It ceased to exist, 1553.

Courts of Law.
Curia Regis.

COURTS OF LAW.

The Curia Regis was at first the same as the Committee of the *Commune Concilium*, known as

¹ "A Court of Record is that where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony."—BLACKSTONE.

Courts of Record are the King's Courts, and they alone have the power of inflicting fines and imprisonment.

the Permanent Council. By degrees the term *Curia Regis* began to be used to denote the King's Council in its capacity of a Supreme Court of Justice, with the King at its head, and in the reign of Henry I. appear traces of a definite organisation and staff, the result of the labours of Bishop Roger of Salisbury. The *Curia Regis*, which at this time always followed the King, was occupied at first more especially with financial business, in which capacity it was called the Exchequer (*see below*). Its members were the great officers of state, the Justiciar (who presided in the absence of the King), the Marshal, the Chamberlain, the Chancellor, the Steward, together with others appointed by the King.¹ In its judicial capacity the *Curia Regis* acted as a Court of Appeal from the local courts, and as a Court of First Instance in cases in which the tenants in chief, who were too powerful to be reached by the lesser courts, were concerned; when special leave was obtained from the King, ordinary cases could be brought before the *Curia Regis*. The *Curia Regis* also was in close connection and communication with the local courts by means of its travelling justices, who, towards the end of Henry I.'s reign, began to make circuits of the country for purposes of finance and justice (*see Circuits*). Under Henry II. the increased judicial business of the *Curia* had caused the number of judges to become so large (18) that the King, in 1178, appointed five of them to sit regularly *in Banco*, to hear all complaints, and to transact all the business which subsequently fell to the three

¹ "It is even possible," says Canon Stubbs (Const. Hist., i., 389,) "that a close examination of existing records would show that all officers who discharged judicial functions were members under some other title of the King's Household."

Courts of Common Law (*see below*); at the same time Henry transferred the appellate jurisdiction to the *Concilium Ordinarium*. This limited body of judges was the origin of the Courts of King's Bench and Common Pleas; the system was slightly modified in 1179 (*see Circuits*). The *Curia* still continued in theory, though not in practice, to transact its business in the presence of the King, and continued to follow him, to the great inconvenience of all concerned. It was shortly afterwards broken up into the three Courts of Common Law, *e.g.*,

Exchequer.

Exchequer, Court of, (from the chequered cloth of the table where the accounts were taken) probably uniting Anglo-Saxon and Norman machinery, which dates from William I., 1079, though it was not fully organised until Roger of Salisbury's time, in the reign of Henry I., *circ.* 1107. It was concerned with the assessment and collection of revenue, and was presided over by the Justiciar, with whom were the Chancellor, Treasurer, and other officers of the *Curia Regis* called, when sitting in their fiscal capacity, *barones scaccarii* (ch. vii.) In these *barones*, travelling for assessment, originated the *itinerant justices*. The Exchequer, the first court to exist from the early importance of financial matters on which everything else depended, was for some time almost indistinguishable from the *Curia Regis*, of which it was originally the financial side; it split off, however, *temp.* Henry III., and became a separate court, with a distinct staff of officers, from Edward I. Exchequer sessions were held at Easter and Michaelmas, at Westminster, when the Sheriffs attended and paid in their dues for ferm, Danegeld, pleas, &c. There were two divisions, 1, *Exchequer of Account*, for the recep-

Barones
Scaccarii.

Justices in eyre.

Exchequer of
Account.

tion of reports and negotiation of business ; 2, *Exchequer of Receipt*, to receive and weigh money. Exchequer of Receipt

The Records, which are of great value, were in two duplicate rolls, called from their shape Pipe Rolls, one kept by the Treasurer, the other by the Chancellor; there was also a record of matters of special importance kept by an officer of the King. Pipe Rolls. Barons of the Exchequer, presided over by a Chief Baron, (first appointed 1312,) decided financial disputes between the King and his subjects, *e.g.*, cases of Bates and Hampden (ch. v.). Common Pleas were forbidden to be heard in the Exchequer 1282, and also by the Statute of Rhuddlan, 1284, by the *Articuli Super Cartas*, 1300, and by the Ordinances, 1311. The Exchequer had common law and equitable jurisdiction only in cases in which the King was specially concerned, but by a legal fiction the rights of other courts were encroached upon, *e.g.*, a plaintiff, A, by alleging that he was a debtor to the King and could not pay because he could not recover a debt owed him by B, could bring his suit against B into the court. This has been rendered impossible by an Act of 1832. The equitable side was abolished 1842, and the Exchequer business was transferred to the Exchequer division of the High Court of Justice, 1876, and is now, by an order in council of 1881, merged in the Queen's Bench Division.

The Court of Common Pleas, which dealt with Common Pleas. civil suits between subject and subject, and which had no criminal jurisdiction. By Magna Carta it was provided, in answer to a request in the articles of the barons, that, for the convenience of suitors, Common Pleas should be held in some fixed place, and should not follow the King.¹ To-

¹ "Communia placita non sequantur curiam nostram sed teneantur in aliquo loco certo."—STUBBS, *Sel. Ch.*, pp. 291, 299.

wards, the end of Henry III's reign, a separate staff of judges were appointed for each court, and under Edward I. the three courts became entirely distinct. In the *Articuli Super Cartas*, 1300, it was provided that no Common Pleas should be held in the Exchequer. The Court of Common Pleas had originally the exclusive jurisdiction in actions concerning real property. It was merged in the Common Pleas division of the High Court of Justice, 1876, but is now, by an order in council, 1881, merged in the Queen's Bench division. The number of judges seems to have varied considerably, *e.g.*, *temp.* Edward III. there were nine, Edward IV. four, Edward VI. seven, James I. five; subsequently the ordinary number was four, presided over by a Lord Chief Justice.

King's Bench.

The Court of King's Bench, (the highest of the three Courts of Common Law) so called from the fact that the King formerly presided in person, might follow the King wherever he went, until merged in the Supreme Court, 1873; *e.g.*, *temp.* Edward I. it sat at Roxburgh. In the *Articuli Super Cartas*, 1300, it was provided that "the King's Chancellor and the justices of his bench shall follow so that he may have at all times near unto him some that be learned in the laws."¹ Its jurisdiction, both civil and criminal, was very great, and its business comprised all that of the old *Curia Regis* which was not transferred to the Courts of Exchequer and Common Pleas. It had special jurisdiction over all inferior courts and civil corporations, and "protected the liberty of the subject by speedy and summary interposition." It had two sides, the *Crown side*, which took cognizance of all criminal causes, and the *Plea*

¹ Blackstone.

side, which took cognizance of all civil causes, except those concerning the revenue, and real actions. It was presided over by a Chief Justice and four judges. The Court of King's Bench is now merged, by the Act of 1873, in the King's (or Queen's) Bench division of the High Court of Justice.

The Court of Chancery, whose early history is intimately connected with the royal Council, ^{Court of Chancery.} sprang from the *Concilium ordinarium* exercising its functions as a Court of Appeal and Equity. ^{Equity.} Equity turns on the idea of the King's perfection, and his power to amend the law, and to redress grievances for which there is no relief at common law. The Chancellor, as the chief legal officer of the Council, presided over it when exercising its judicial functions in the King's absence. From the reign of Henry II. all suits were begun by writ; offences and cases for which no special writ existed could not be tried; to obviate this difficulty the drawing up of special writs to meet such cases was entrusted to *Clerks in Chancery*, *temp.* Edward I. In 1280, "matters of grace and favour" were to be reported on by the Chancellor before being referred to the King; and in 1348, the *Court of Chancery* was established by an ordinance specially giving the Chancellor authority in matters of grace; at the same time Chancery ceased to follow the King. The equitable jurisdiction of Chancery grew rapidly under Richard II., in whose reign John Waltham "by a strained interpretation of the statute of Westminster II., devised the writ of *subpana* ^{Writ of Subpoena} returnable in the Court of Chancery,"¹ by which a suitor could compel his adversary to appear. From 1394, it stands out with great distinctness,

¹ Blackstone.

and gradually increases its power in spite of remonstrances made by the Commons during the Lancastrian reigns. There were continual struggles between Chancery and the Common Law Courts as to whether the former could remove causes from, and reverse the decisions of, the latter, *e.g.*, between Sir Edward Coke and Lord Chancellor Ellesmere, when James I. decided in favour of Chancery, 1616. From Edward IV. to Charles II., the system of equity did not make much progress; from that time, however, it was gradually perfected until it reached its zenith under Lord Eldon. (*See Chancellor, Master of the Rolls, and Vice-Chancellor*, ch. vii.)

•
Exchequer
Chamber.

The Court of Exchequer Chamber was a Court of Appeal, with no original jurisdiction. It was instituted in 1357 (31 Ed. III., c. xii.) as a Court of Appeal from the Common Law side of the Exchequer; its members were the Lord Chancellor, the Lord Treasurer, and the judges of the King's Bench and Common Pleas. In 1585, (27 Eliz. c. viii.) the judges of the Common Pleas and the barons of the Exchequer were empowered to try appeals from the Court of King's Bench. The Court was again reconstituted in 1830, (11 Geo. IV., 1 Will. IV.) It is now merged in the High Court of Appeal. Causes which the judges found "to be of great weight and difficulty" were sometimes heard in the Court of Exchequer Chamber before judgment was given in the Court below. Appeals lay from this Court to the House of Lords.

Forest Courts.

Forest Courts. A system of independent *Forest Courts* was established by Henry I., and perfected by Henry II.; they were formerly held with great regularity, but the "last Court of Justice Seat of any note" was held *temp.* Charles I. before the

Earl of Holland.¹ The Forests Courts, which were regulated in 1641 (16 Car. I.), fell into disuse at the Revolution of 1688. They were four in number—

1. *The Court of Attachments* or Woodmote, held every forty days to enquire into offences against *vert and venison*, i.e., against the trees and covert, and against the game.

2. *The Court of Regard*, held every three years for the *expeditation* of dogs, i.e., the cutting one of the three claws, or the ball of one of the forefeet, to prevent their hunting.

3. *The Court of Sweinmote*, held three times a year for the trial of general offences.

4. *The Court of Justice Seat*, or chief court held before the Chief Justice in eyre, for the trial of all cases connected with the forest. (*See Forests* ch. v.)

COURTS CONNECTED WITH THE WAR DEPARTMENT.

Court of the Marshal and Constable, otherwise known as the *Curia Militaris* or *Court of Chivalry*,² was a court formerly held before the Earl Marshal and the Lord High Constable; by a statute of 1390 (13 Rich. II.) it had jurisdiction over “pleas of life and member, arising in matters of arms and deeds of war, as well out of the realm as in it,” and was in the days of chivalry much frequented as a court of honour. Appeals lay from it to the King. Since the attainder of the Duke of Buckingham, 1521, the office of Lord High Constable has been revived only on special occasions, and the court has been held before the Earl Marshal alone, with jurisdiction in civil matters. It was last used 1737. The College of Arms is its descendant at the present day. (*See Constable and Marshal*, ch. vii.)

¹ Blackstone.

² *Ib.*

Admiralty.

Court of Admiralty was established by Edward III., *circ.* 1350, and was held before the Lord High Admiral (ch. vii.) or his deputy. It had both criminal and civil jurisdiction, and took cognizance "of all crimes and offences committed either upon the sea or on the coasts out of the body or extent of any English county.¹" The Admiralty Courts were regulated and their powers limited 1390, 1392, 1536, 1827—8 and 1840, while their criminal jurisdiction was taken away 1844. The Admiralty Court was by the Act of 1873 transferred to the Probate, Divorce, and Admiralty division of the High Court of Justice. There was until recently a *Prize Court* for the decision of questions connected with prizes and booty in time of war.

Household
Department.
Court of Lord
Steward.

COURTS OF THE HOUSEHOLD DEPARTMENT.

Court of Lord
High Steward.

Court of the Lord Steward of the Household was established 1541 (33 Henry VIII.) on the precedent of a statute of 1486, empowering the Lord Steward to try charges of treason brought against members of the royal household; it had jurisdiction over "all treasons, misprisions of treason, murders, manslaughters, bloodshed and other malicious strikings,"² within two hundred feet of the palace gate. Part of its jurisdiction was taken away 1829 and the rest 1849. From it must be carefully distinguished the *Court of the Lord High Steward of Great Britain* which is constituted, *pro hac vice*, to try peers accused of treason or felony when Parliament is not sitting. A Lord High Steward being appointed by a commission under the Great Seal could summon an indefinite number of peers to try the case; though not less than twenty-three. This practically gave the crown the power

¹ Blackstone.

² *Ib.*

of securing a conviction by a judicious selection of peers. In 1696, however, (7 Wm. III.) the right of attendance was given to all peers.

Court of the Marshalsea was of very old origin and was held before the Steward and Marshal of the King's household to administer justice to the King's servants. It was regulated by statutes of 1300, 1331, 1384, 1390, and 1436. By the statute of 1390 its jurisdiction was extended to a radius of twelve miles from the King's palace. It was abolished 1849. With it is closely connected *The Palace Court* (*Curia Palatii*), erected by Charles I. in 1631, to try personal actions within twelve miles of Whitehall Palace. It was abolished 1849.

Court of
Marshalsea.

Palace Court.

COURTS OF SPECIAL JURISDICTION.

The Stannary Courts (*Stannum tin*) are courts for the administration of justice amongst the tinners in Devonshire and Cornwall. A charter of 1305 confirmed the ancient privileges of the tin workers to sue and be sued, except in cases of land, life, and member, in the Stannary Court only, before the Vice-Warden of the Stannaries; these privileges were again set forth in a statute of 1377. In 1512, Strode, a member of the House of Commons, was imprisoned by the Stannary Court for having proposed a bill for the regulation of the tinworkers. The House declared these proceedings void 4 Hen. VIII. (See *Privileges of Parliament*, ch. iii.) In 1607 the judges held that no writ of error lay from the Stannary Courts to any Court at Westminster, though an appeal lay from the Under Warden to the Lord Warden, and thence to the Privy Council of the Prince of Wales, as Duke of Cornwall. In 1855 the appeal lay from the Lord Warden to the Judicial Committee of the Privy Council, and now

Courts of Special
Jurisdiction.
Stannary Courts.

lies to the Court of Appeal of the Supreme Court of Judicature. The Stannary Courts, which are courts of record, were regulated in 1641, 1836 and 1839. (*See Stannaries*, ch. vi.)

Cinque Port
Courts.

Courts of the Cinque Ports, i.e., of the ports of Sandwich, Dover, Hythe, Hastings and Romney (to which were subsequently added Winchelsea and Rye). These ports had special privileges and jurisdiction as early as the time of William I., and had courts of their own where the King's writ did not run, (except prerogative writs such as *habeas corpus*). These courts were held before the mayor and jurats of each port, a writ of error lying to the Lord Warden's Court at Shepway, and thence to the King's Bench. They were the courts of Brotherhood, and Guestling, in which matters concerning the supply of ships were regulated, the Court of Chancery, held at Dover, the Court of Shepway, the highest of all, and the Courts of Admiralty, and Lodemanage, (concerning pilots) which are still held. (*See Cinque Ports*, ch. vi.)

County Palatine
Courts.

Courts of the Counties Palatine. The Earls of the Palatine Counties of Chester, Lancaster, and Durham, had royal rights, and the sole administration of justice in their territories where the King's ordinary writs did not run; all writs were issued in the name of the Earl, and offences were said to be against his peace. They had Courts of Common Pleas and Chancery, the judges of which were appointed by the Earl until 1536, when many of the special privileges were curtailed by 27 Hen. VIII. The Chancery Court of Lancaster still exists, though the Common Plea Courts were abolished by the Supreme Court of Judicature Act of 1873. (*See Counties Palatine*, ch. vi.)

Court of Commissioners of Sewers is a court authorised in 1532 (23 Hen. VIII., ch. v.), to be appointed when required by a commission under the Great Seal. The commissioners are appointed for some particular district and have jurisdiction in the place named only; their business is "to overlook the repairs of sea banks and sea walls, the cleansing of public rivers, streams, etc.;" they form a Court of Record.

Court of Commissioners of Sewers.

LOCAL COURTS.

The Shire-moot (scir-gemot).

Shire-moot.
Pre-Norman.

1. *Before the Norman Conquest.*

The shire-moot was originally the folk-moot or assembly of the people, as well as the court of the shire. The meetings were held "twice a year" (May and October) under the presidency of the sheriff, (the royal officer,) who was also the convener; with him sat the bishop and the ealdorman (the national officer). Its members were the land-owners, the reeve, priest, and four representatives from each township, twelve representatives from every hundred, and all officials. Judgment lay theoretically with the whole body of suitors, though practically a committee consisting of the twelve senior thegns declared the shire report. Its judicial powers, civil, ecclesiastical, and criminal, were large, though suitors had first of all to seek justice in the lower court; if they failed to obtain it the appeal lay to the shire court. New laws were announced in it by the sheriff as the King's representative, and *temp.* Athelstan, the Kentish shire-moot at Faversham is found approving of certain new police laws. All suitors on their way to and from the shire and hundred courts were under the special protection of the

¹ Sel. Charters, 71, 73. Laws of Edgar and Canute.

law.¹ With the shire-moot popular representation at this time ends.

After the
Norman
Conquest.

2. *After the Norman Conquest* the powers of the shire or county courts declined, owing to the separation of the spiritual and temporal courts, when the Bishop ceased to attend. About 1108 Henry I. ordains that the county and hundred courts shall be held in the same places and at the same times as in Edward the Confessor's reign.² The sheriff continued to preside, though with increased power, owing to the disappearance of the ancient ealdorman, and the business was conducted as in the pre-Norman times. The county courts were at this time chiefly concerned with the dispensation of justice both in civil and criminal cases, (they tried private suits, and recorded the pleas of the crown,) and with the assessment of the revenue (ch. v.); these duties were performed by jurors and judges. Under Henry II. the county court not only performed all the ordinary business of the shire but was also called together to meet the itinerant justices; in this latter capacity the court was more completely representative of the county than at its ordinary sessions.³ Magna Carta contains some provisions as to the holding of certain assizes in the County Courts four times a year, and limits their jurisdiction by forbidding sheriffs, constables, and bailiffs to hold places of the crown. The charter of Henry III., 1217, provides that the County Court shall be held monthly⁴; and it was

County Courts
comp. John.

¹ Sel. Charters, 71, 73.

² Ib. 104, 105.

³ It contained "the archbishops, bishops, abbots, priors, earls, barons, knights and freeholders, and from each township four men and the reeve, and from each borough twelve burghers."—STUBBS, Const. Hist. ii., 205.

⁴ Sel. Charters, 346.

in these ordinary meetings, from attendance at which many magnates and towns were excused,¹ that matters of local or private interest were transacted; extraordinary meetings, such as those to meet the justices, were convened by special writ.² These monthly sessions were confirmed 1225, 1297, and 1548 (2 and 3 Ed. VI.) The county business transacted in these courts was: Business.

(1.) *Judicial.* The justices sat there when on Judicial. circuit; all matters relating to the police organisation of the county were also managed in the court. The coroners who kept the pleas of the crown were elected in the county court.

(2.) *Financial.* Taxes were assessed by knights Financial. chosen in the court.³

(3.) *Military.* The sheriff summoned the smaller Military. freeholders, and proclaimed his orders in the court.

The knights of the shire were also at a later period elected in the County Court (ch. iii.), (see *Sheriff*, ch. vii.) Even as early as Magna Carta, 1215, all sheriffs, constables, coroners and bailiffs had been forbidden to hold pleas of the crown, which were transferred to the King's justices, and from the time of Edward I. the county courts gradually lost their power as they became less and less used for judicial purposes. In 1846 the modern County Courts, for the recovery of small debts, were established in place of the Courts of Request (p. 51); their jurisdiction was extended 1850, and limited equity powers were granted to them 1865.

The Hundred Moot.

Hundred Moot.

(1.) *Before the Norman Conquest* met once a Pre-Norman. month,⁴ and was convened by the hundreds ealdor.

¹ Sel. Charters, 311. (Charter of Dunwich.)

² Ib. 358.

³ Ib. 352.

⁴ Ib. 71. (Laws of Edgar, cap. 5.)

The suitors were all holders of land within the hundred, or their representatives, and six representatives from each township, *viz.*, the parish priest, the reeve, and the four best men. The judges, though in theory the whole of the suitors, were practically a chosen body of twelve; this body of twelve appears in the laws of Ethelred as a Jury of Presentment, sworn to present every guilty person in the hundred to justice, and *temp.* Henry II., became the Grand Jury (*see below*). All suitors were bound to attend the Court when summoned, under penalty of a fine. The jurisdiction of the Hundred Court was both civil and criminal, though its powers in criminal cases were, from the first, much diminished by grants of *sac* and *soc* to private individuals. All suits had to be first tried in the Hundred Court before being taken to a higher tribunal. The Hundred Court was represented in the Shire Court by twelve chosen men. The ealdorman and bishop, owing to the number of hundreds in the shire, could only be present on occasions of peculiar importance.

After Norman
Conquest.

(2.) *After the Norman Conquest.* *Circ.* 1108, Henry I. orders that the Hundred Court shall be held as in the time of Edward the Confessor¹; the ordinary Hundred Court met, *temp.* Henry II., every fortnight, and was occupied entirely with minor suits and debts; twice a year there was held the Great Hundred Court, for the view of frankpledge (*see below*). Under Henry III., 1234, the Hundred Courts for the adjudication of small cases were to be held every three weeks; the Statute of Merton, 1236, excused freemen from personal attendance both at the Hundred and County Courts; the jurisdiction of the Hundred Courts gradually

¹ Sel. Charters, 103.

declined, and in spite of an attempt, in 1340, to remedy abuses which had crept into the working of the Courts they soon fell into disuse. They were abolished, 1867, by a provision that no suit that could be brought in a County Court should be brought in any inferior court.

The Township Moot (*tungemot*), the forerunner of the vestry meetings of the present day, was the lowest court, being in early times often very little more than a family meeting. Its functions were small, and were limited to local affairs of police and the like, and to the making of *by-laws* (i.e., village or township laws). It also elected the *reeve*, (ch. vii.) except in cases of dependent townships, where he was the lord's nominee. Township Moot.

The Sheriff's Tourn was held twice a year, within a month of Easter and Michaelmas, before the sheriff, "being indeed only the *turn* of the sheriff to keep a court leet in each respective hundred."¹ At the Michaelmas "tourn" a *view of frankpledge* was taken² (*see below*). After the Provisions of Westminster,³ 1259, and Statute of Marlborough 1267, (52 Hen. VIII.) exempted the great men and clergy from attendance at the sheriff's tourn, it soon fell into disuse. Sheriff's Tourn.

Manorial Courts. The outcome of the private jurisdictions of *sac*, *soc.*, etc. (*see below*), were (1) *Court Leet*, a court held once a year in certain hundreds, or manors, where the lords had previously had *sac* and *soc*. A Court Leet had criminal jurisdiction, and its suitors were exempted from attendance at the Hundred Court; the judge was the steward of the *leet*. The business of the Court was more especially *view of frankpledge* (*see* Manorial Courts.

¹ Blackstone.

² Sel. Charters, 346. (Charter of 1217, Art. 42.)

³ Ib. 402. (*Prov. West.*, Art. 4.)

below), the presentment by jury of all crimes committed within its jurisdiction, and the punishment of minor offences. By the Statute of Marlborough, 1267 (52 Hen. III.), all bishops, peers, nobles, and clergy, were exempted from attendance, causing the importance of the Court Leets to decline very much, though they are still occasionally held in certain manors. The Court Leet was a court of record.

Court Customary. *Court Customary* was a court held in every manor, under the presidency of the steward, to settle questions connected with villenage and copyhold tenure.

Court Baron. *Court Baron*, (court of the *barons* or freeholders), was a court held in every manor before all freeholders who owed suit and service to the lord, and was the descendant of the Township Moot. It was not a Court of Record. It was held every three weeks, under the lord or his steward, and determined all disputes about the lands within the manor; it also decided actions of 40/., debt or damage.

Private Jurisdiction. *Private Jurisdiction* was frequently given to the recipients of large grants of land, and by this means many lordships were entirely removed from the jurisdiction of the local courts.¹ The growth of the private courts materially increased the power of the great landowners, and diverted much of the profits of justice from the King. The chief rights granted were²:—

Sac. *Sac*, the power of holding courts, imposing penalties and settling disputes;

Soc. *Soc*, the privilege of jurisdiction in a certain district; also used for the district itself;

¹ They were not exempt from the jurisdiction of the Shire Court until after the Norman Conquest.

² Stubbs, Const. Hist., i., 184. Note 2.

Sel. Charters, 78, 106. Charter of Nottingham 166.

Tol, a right of holding markets ;

Tol.

Team, right of compelling a man in possession *Team*.
of stolen goods to give warranty or vouch from
whom he received them.

Team.

Infangentheof, the right of Criminal Jurisdiction. *Infangentheof*.

Infangentheof.

Anglo-Saxon Police Arrangements were based primarily on the idea of mutual responsibility. At Police Arrangements of Anglo-Saxons.

Police Arrangements of Anglo-Saxons.

first the *mægth*, or kindred, of an offender were responsible for his appearance, then the guilds

Mutual Responsibility.

became liable. By a law of Athelstan every landless man was bound to have a lord, who was responsible for his appearance when necessary.¹

Edgar enacted that every man should have a *borh*,

or surety, who should be answerable for him in the event of his escaping from justice.² By a law of

Canute every freeman had to enrol himself in a

hundred and a *tithing*, (answering, probably, to a tenth of the hundred, or signifying an association

of ten families). In the laws of Edward the Con-

fessor,³ it is ordained that all men shall be bound

together in mutual responsibility in associations of

ten, called in the south *frithborh* or *frankpledge*,

and in the north *tenmennetale*. These *frithborhs*,

which were presided over by a *borhs ealdor*, had

no actual existence in England before the Norman

Conquest. The *view of frankpledge*, after the

Norman Conquest, was an enquiry held twice a

year by the sheriff, in the *Courts Leet* and *Sheriff's*

Tourn, into the condition of the various *frankpledges*;

the time of holding the "view" was regulated

1297 (25 Ed. I.) Under the Norman Kings the

law was administered with a heavy hand, usually to

the prejudice of the English. William I. introduced

the custom known as *Presentment of Englishry*,

Frankpledge.

Tenmennetale.

View of
Frankpledge.

Presentment of
Englishry.

¹ Sel. Charters, 66.

² *Ib.* 71.

⁸ *Ib.* 77.

by which a murdered man was regarded as Norman, and the neighbourhood in which the body was found punished accordingly, unless it could be specially proved that he was an Englishman¹. By the time of the fusion of the Normans and English had taken place, *temp.* Henry II., this law had ceased to be burdensome, though it was not abolished until 1340 (14 Ed. III., c. i.)

Compurgation.

Compurgation. In Anglo-Saxon times facts were determined either by Compurgation or by ordeal. If a man was accused by a private individual he might bring *Compurgators* to swear to his good character and credibility; the value of the oaths of these witnesses to character, who as a rule were twelve in number, varied with their social position; thus a thegn's oath equalled the oaths of twelve ceorls, whilst an ealdorman could outweigh the testimony of six thegns or a whole township. A criminal presented for trial in the Shire Court by the Hundred Court was regarded as already convicted by public opinion, and could not seek acquittal by Compurgation. The practice of Compurgation was abolished *temp.* Henry II., (*see below, Trial by Jury*), though it continued to be occasionally employed in boroughs which had a charter of exemption from the Shire Court.

Wager of Law.

Under the name of *Wager of Law* Compurgation also continued to be occasionally employed in actions for debt until abolished 1833 (3 and 4 Wm. IV. c. xlii.)

Ordeal.

*Ordeal.*² Facts were also determined by the Ordeal, which was compulsory, 1. When a man had been previously convicted of perjury. 2. When he could not get together enough Compurgators.

¹ Sel. Charters, 84, 201.

² Ib. 71, 77, 84, 143, 151.

3. When he was taken in the act of committing the crime. The Ordeal usually took the form of walking over, or handling, red hot iron, or plunging the arm into boiling water ; when plunged to the elbow it was known as the *triple Ordeal*, when to the wrist only as the *single Ordeal*.¹ In these cases the injured limb was bound up by the priest for three days, and if at the end of that time the wound had perfectly healed the accused was acquitted. There was also another method ; that of tying a man's limbs and throwing him into a river or pond ; if he sank he was considered innocent, if he swam guilty. The *Corsned* or "accused morsel" was also employed occasionally ; a piece of bread being swallowed with a prayer that it might prove fatal if the swallower was guilty ; Earl Godwin is said to have perished in this manner 1053. Trial by Ordeal continued in England until it was abolished 1218, in conformity to a decree of the Lateran Council 1215.

Triple Ordeal.

Single Ordeal.

Corsned.

Wager of Battle, a custom introduced by William I., who, however, still allowed the English to be tried by Ordeal if they preferred it,² was used in civil actions, in trials in the Court of Chivalry, and in appeals of felony. (1) In civil cases the combat was fought by champions, not by the parties themselves, for fear one of the parties to the suit should be slain, thus putting an end to the case ; (2) In military cases the combat was under the auspices of the Constable and Marshal, and, unless the King interposed, continued until one of the combatants was slain or gave in ; in the latter case the one who yielded was put to death ; (3) In cases of murder or manslaughter an "appeal of

Wager of Battle.

¹ Laws of Edgar and Ethelred, Sel. Charters, 71, 72.

² Statutes of Wm. I., Sel. Charters, 84.

felony" could be brought by blood relations of the murdered man¹ against the murderer, who had the right to claim "wager of battle" unless the accuser was "a woman, a priest, an infant, or of the age of sixty, or lame, or blind." The accused pleaded not guilty, and threw down a glove which was taken up by the accuser. After a solemn oath had been taken, the combat commenced; if the accused was vanquished he was hanged; if he killed his adversary, or prolonged the fight from sunrise "till the stars appear in the evening," he was acquitted. Wager of battle was claimed as recently as 1817 by one Abraham Thornton accused of murder, who had to be discharged as the appellant refused to accept the challenge. The custom was regulated 1285 (13 Edw. I.) and abolished 1819 (59 Geo. III. c. VI.) Trial by battle was however repugnant to English feeling and was never popular, *e.g.*, many towns obtained the insertion in their charters of an exemption from the "wager" for the burghers.²

Punishments.

Judicial punishments were—

Capital.

1. *Capital*. In Anglo-Saxon times death was nominally inflicted in cases of theft where the value of the article stolen exceeded 12d., *e.g.*, in the laws of Ine, Athelstan, Edgar and others; practically, however, the thief was allowed to redeem his life by a fine.³ Treason was made "death-worthy" by Alfred,⁴ (p. 2) and by degrees offences against the King, such as coining, and fighting in the King's hall, were made capital. Sacrilege and witchcraft were also punished by death. Ethelred in his laws (1008) decrees that "Christian men for all too little

¹ A woman could bring an appeal only against the murderer of her husband by Magna Carta 54, and 25 Edw. I.

² Sel. Chart., 266, 267. (Charters of Winchester & Lincoln.)

³ "If a thief be taken let him be put to death, or let his life be redeemed according to his wer."—Laws of Ine.

⁴ Sel. Charters, 63.

be not condemned to death, but in general let mild punishments be decreed for the people's need," and by William I. capital punishment was entirely abolished, and mutilation substituted.² It was, however, speedily revived under Henry I. "the Lion of justice," who in 1108 declared that all theft, robbery, clipping, and coining false money, should be punished by hanging,³ and in 1124 we find Ralph Basset the Justiciar hanging forty-four thieves at one time at Hundehoge in Leicestershire.⁴ From this time until 1820 theft remained a capital offence. In that year, by the statute 1 Geo. IV., the punishment of death was taken away from many offences, though it continued to be the penalty for forgery until 1837. The laws of England were, up to a recent period, extremely draconian, no less than one hundred and sixty offences, many of which were added during the Hanoverian period, being punishable by death; though on several occasions, notably by Magna Carta, and by Statutes of 1331 and 1354 (5 and 28 Edw. III.) it was ordained that no man should suffer death except in strict accordance with the process of law. The infliction of capital punishment was mitigated and regulated 1820, 1823, 1837, 1841, and the laws on the subject were consolidated and amended 1861 (24 and 25 Vic.); the penalty of death now attaches only to the crimes of high treason⁵ and murder. In Anglo-Saxon times the punishment of death was inflicted in various ways by hanging, beheading, drowning and burning;

¹ Sel. Charters, 73. ² Ib. 85. (Statutes of William I., c. x.)

³ Ib. 97. (Flor. Wig., 1108.)

⁴ Ib. 98. (Chron. Ang. S., 1124.)

⁵ Persons convicted of treason were usually put to death with great barbarity, being disembowelled and quartered whilst still alive.

subsequently hanging and beheading became the usual method of execution; drowning, however, continued to be employed in the case of women for some time during the middle ages, and burning in the case of heretics (1401 *de heretico comburendo* 2 Hen. IV.¹) abolished 1677, and women convicted of treason, abolished 1790.²

Mutilation.

Mutilation was frequently employed in early times, and was substituted by William I. for the punishment of death.³ It was often inflicted for breach of the Forest Laws⁴ (ch. v.), and continued to be frequently employed for certain offences such as libel, especially under the Star Chamber (p. 49), *e.g.*, Prynne, Burton and Bastwick had their ears cut off by order of the Star Chamber, 1637.

Peine forte et dure.

Peine forte et dure. A punishment inflicted on those who refused to plead when indicted for felony, was introduced by the *Statute of Westminster* I, 1275, and at first consisted in a rigorous prison discipline and diet. The punishment, however, gradually took the form of laying a heavy iron weight on the body of the prisoner until he submitted; if he remained obstinate he was pressed to death. This latter method of inflicting the *Peine forte et dure* is first mentioned 1407 (8 Hen. IV.) An instance is recorded of its infliction as lately as 1741; it was not abolished until 1772 (12 George III.)

Fines.

Fines in Anglo-Saxon times were inflicted for

¹ Instances of the burning of heretics occur before this.

² By a statute of 1531 poisoners were ordered to be boiled to death but the statute was repealed 1547.

³ Sel. Charters, 85 (stat. William I., c. x.); 151 (A. of North., Art 1.)

⁴ By the Charter of the Forest, c. 10 (1217) the punishment of death, and mutilation for Forest offences was abolished.—Sel. Charters, 349.

almost every offence; they took the form of *bot*,¹ Bot. or compensation paid to the injured party, and of *Wite*. *wite*, or fine paid on each occasion to the King for the breach of his peace (*mund*). There was also *Oferhyrnes*. a special kind of fine known as *oferhyrnes*² inflicted in cases of contempt, such as failing to attend meetings when summoned, and the like. The *bot* for a wound an inch long in the face was three shillings³; for the loss of an ear thirty shillings. Murder (*murdrum*) was redeemable by paying *Wergild*. a *wergild*⁴ to the relatives of the murdered man. (*Wer*, a man's value as to life or oath, e.g., 200 shillings for a ceorl, 1200 for a King's thegn [ch. vii.]) In early times, on the murder of a King, *Cynebot*. a fine called *cynebot*⁵ was due to the people, as well as the *wergild* to the King's relatives. When a man could not or would not pay the *wergild*, or the *bot*, he was put out of the King's peace, and those whom he had injured could take what vengeance they chose upon him. In later times, *Later Fines*. fines were frequently inflicted with a view to filling the King's coffers; especially *temp.* Henry VII. (who fined the Earl of Oxford £15,000 for keeping retainers in livery); *temp.* James I. (by means of the Star Chamber); and *temp.* Charles I. (who fined Lord Salisbury £20,000, Lord Westmorland £19,000, and Sir C. Hatton £12,000, for trespassing on the royal forests.) By Henry I.'s Charter of Liberties⁶ (1100) fines were to be assessed according to ancient usage; excessive fines were likewise forbidden by Magna Carta, by the Statute of Westminster 1, 1275, and by the Bill of Rights, 1689, which also forbade the infliction of cruel and unusual punishments.

¹ Sel. Charters, 61, 63. (Laws of Alfred, c. 38.)

² Ib. 66. (Athelstan, c. 20.) ³ Ethelbert.

⁴ Sel. Charters, 65, 201.

⁵ Ib. 65.

⁶ Ib. 101.

Various
Punishments.

Other punishments were also inflicted for offences against the Law, *e.g.*, imprisonment, the pillory, (abolished 1837), the stocks, which were in general use from about 1350 up to the beginning of the present century, and the ducking stool, used as a punishment for scolds. Outlawry was also sometimes employed¹ (ch. vii.)

Torture.

Torture, though contrary to the Law of England,² was frequently employed during the Middle Ages by the exercise of the prerogative of the Crown. The first instance occurs under Edward II., 1310,³ when the King and Council, in answer to a request of Pope Clement V., allowed the Templars to be tortured. The Duke of Exeter (John Holland) *temp.* Henry VI. introduced the rack, which was in consequence known as the "Duke of Exeter's daughter;" and *temp.* Edward IV. there are instances of its employment. Under Henry VIII. Anne Askew was severely racked, and under Elizabeth the victims of the Star Chamber (especially the Jesuits and Catholics) were frequently tortured when it was desired to elicit information, although torture was forbidden by the Queen. The conspirators in the "Gunpowder Plot of 1605" were all tortured, and Edmund Peacham was severely racked, 1615.⁴ Torture was declared illegal by Sir Edward Coke, and this opinion was expressed by all the Judges when it was proposed by the Privy Council to put Felton, the assassin of the Duke of Buckingham, to the rack,

¹ Sel. Charters, 145, 151.

² Magna Carta, "*Nullus liber homo aliquo modo destruatvr.*"

³ The French Admiral, Turbeville, captured at Dover, 1295, is said to have been tortured, but the facts of the case are uncertain.

⁴ "He was examined" says Sir Ralph Winwood, "before torture, in torture, between torture, and after torture."

1628. The last instance of torture in England occurred in May, 1640. The usual modes of torture were the rack, the *Scavenger's* daughter, (an instrument invented *temp.* Henry VIII. by Sir William Skeffington, Governor of the Tower of London,) the thumb screws, and the boot.

Benefit of Clergy, originating in the early favour with which the Church was regarded, and in the power which churchmen exercised through their higher education, was the right of any clerk in orders, who was accused in a secular court, to claim his discharge at once into the bishop's court, where he was usually acquitted. This privilege, which had led to great abuses, was partially restricted by a statute of Henry VI., to the effect that the clerk must be convicted, or at least arraigned, before he could claim it; by that time the privilege had become extended to all who could read, whether clergy or not, and in 1489 (4 Hen. VII.) it was enacted that those not in orders should only be allowed to claim benefit of clergy once, and that they should be branded on the hand. In 1512 (4 Hen. VIII.) the privilege was taken away from murderers and felons; in 1536 and 1540 the distinction between laymen who could read and clergy was abolished, but revived 1547. In 1576 (18 Eliz. c. vii.) the process of handing the offender over to the ecclesiastical courts was dispensed with, and in 1706 (5 and 6 Anne) the test of reading was no longer required, whilst other punishments instead of the burning of the hand might be inflicted at the discretion of the judge. The privilege of benefit of clergy was done away with 1827 (7 and 8 Geo. IV.). By the statute of 1547 (1 Ed. VI.) peers of parliament were granted a privilege equivalent to benefit of clergy, "although they cannot read, and without

being branded in the hand, for all offences then clergyable to commoners.¹" This privilege of peerage was abolished 1841.

Sanctuary.

Privilege of Sanctuary. There were certain spots set aside as sanctuaries, or places in which persons guilty of any crime, except sacrilege or treason, were safe from penalties. The custom is of very ancient origin, and appears in England in the laws of Ini, Alfred, and William the Conqueror. The Privilege of Sanctuary extended for forty days, within which time the person taking sanctuary had to confess his guilt before the coroner, and to abjure the realm. Statutes were passed in regulation of sanctuaries, *temp.* Henry III., and in 1378, 1529, (21 Henry VIII.), when felons and murderers in sanctuary were ordered to be branded, in 1534 and 1536, when the right was taken away from those guilty of treason or piracy; in 1536, also, every one in sanctuary was forbidden to carry arms. In 1540 (32 Hen. VIII.) the number of sanctuaries was diminished, and the privilege taken away from many offenders. In 1624, (21 Jac. I., c. xxviii.) sanctuaries were abolished, though they still continued to be used in London, in the case of debtors, until 1697.

Trial by Jury.

Trial by Jury. The origin of the Jury system has been much debated; it has been ascribed to Alfred the Great, to Regner, King of Denmark, to the Canon law, to the Ancient Britons and to many other sources.² In point of fact the petty jury system had no existence in Anglo-Saxon times, the trial by *Compurgation* being often confounded with it. Our modern jury system has its *origin in*

¹ Blackstone.

² For these *v.* Stubbs, *Const. Hist.*, i., 612.

*the inquest by sworn recognitors*¹ introduced by the Normans. This system of *Recognition* was at first used for financial and subsequently for judicial purposes, being elaborated into the form of Trial by Jury by Henry II. In 1070 by order of William I. twelve men were elected in each county to swear "to the customs and rules of their own laws."²

Recognitors.

In 1085 a jury of recognition was chosen to state information on oath for the Domesday survey (ch. v.)³

Civil.

Under William Rufus and Henry I. the jury of recognition was used for purposes of assessment (ch. v.), and in 1106 was employed to ascertain the customs of the Church of York. By Henry II. the system of inquest by recognitors was elaborated, and used for judicial as well as other purposes; this elaboration in its civil side was known as the *Grand Assize*; by it any one, whose possession of his freehold was disputed, might refuse trial by battle, and claim to have the question tried by twelve legal knights of the vicinity, chosen by four legal knights of the county; these twelve were to swear which of the disputants had the best claim; if they were not unanimous, or some were ignorant of the facts, other recognitors were to be added until twelve agreed.⁴ By the *Constitutions of Clarendon* (Appendix A.) quarrels between the clergy and laity on questions of tenure were to be settled "by the decision of the Chief Justice of the King after the recognition of twelve lawful men,"⁵ and, by the Assize of Northampton 1176, the property due to heirs is to be determined by a recognition taken by twelve lawful men.⁶

The Grand Assize.

¹ "Directly derived from the Frank capitularies."—STUBBS, *Const. Hist.*, i., 613. ² *Sel. Charters*, 81. (R. Hoveden.)

³ *Ib.* 86.

⁴ *Ib.* 161. (*Glanville de legibus Angliæ.*)

⁵ *Ib.* 139.

⁶ *Ib.* 152.

Criminal Jury

The Jury in Criminal Cases was originally the *Jury of Presentment*, the prototype of which may be seen in the twelve senior thegns mentioned in the laws of Ethelred, who swear to "accuse no innocent man nor conceal any guilty one."¹

The Constitutions of Clarendon mention a criminal jury; "if those who are charged are so powerful that no one will or dare accuse, the sheriff, at the bishop's request, shall make twelve lawful men of the neighbourhood or town, swear that they will tell the truth according to their conscience,"² and by the *Assize of Clarendon*, 1166, inquest was to "be held in each county, and hundred, by twelve lawful men of the hundred, and four lawful men of the township,"³ to present all reputed offenders, who were thereupon to undergo the *ordeal by water*. By the *Assize of Northampton*, 1176, all men charged before the King's justices of murder, theft, robbery, forgery, arson, and the like, by the oath of twelve knights of the hundred, or, if the knights are not present, the oath of twelve lawful freemen, and by the oath of four men from each town of the hundred, are to go to the ordeal of the water.⁴ In the "form of proceeding for the judicial visitation," 1194, it is provided that four knights are "to be chosen from the whole county, who are to choose, on their oath, two lawful knights from each hundred or wapentake, and these two are to choose, on their oath, ten knights from each hundred or wapentake, or, if there are no knights, lawful and free men, so that these twelve may answer together for all matters in the whole hundred or wapentake."⁵ This Jury of Presentment was the immediate an-

Jury of
Presentment.

¹ Sel. Charters, 72.

² Ib. 139.

³ Ib. 143.

⁴ Ib. 151.

⁵ Ib. 259.

cestor of the modern *Grand Jury*, which now consists of from twelve to twenty-three, sworn out of twenty-four freeholders summoned by the sheriff; these grand jurymen receive indictments, and hear the evidence for the prosecution, to determine whether there is sufficient evidence to put the accused on his trial; if they are satisfied they find a "true" bill, if not they "ignore" the bill. Towards the end of Henry II.'s reign *Compurgation* was done away with, and on the abolition of the ordeal by the Lateran Council, 1215, there remained no method of proving the innocence of any one presented by the Grand Jury; accordingly the *Petty Jury* of twelve was introduced, *to traverse the decision of the Grand Jury*. Even before the abolition of the ordeal, a second jury had sometimes been employed to try the case again, and *temp.* Henry III. the practice became general. An accused person was, however, not compelled to plead, though, if he refused to do so, he suffered the penalty of the *peine forte et dure* (p. 74).

All this time the juries had been witnesses of fact only, not judges, and came to their decisions not according to evidence adduced, but from their own previous knowledge of the case. By degrees it was found that the jurors often were too ignorant of the case to come to a decision, and the practice arose *temp.* Edward I. of "*afforcing*" the jury by adding to it other recognitors familiar with the facts. This *jury of afforcement* gradually developed into a sworn body of witnesses without any judicial functions, whilst the first jury gradually confined themselves to acting as judges of fact, *temp.* Edward III. Under Henry IV. the jury begin to hear evidence in open court, and about the time of Mary the principle becomes recognised that the jury

should know nothing of the case, and should be unprejudiced. The jury system was also intimately connected with the history of representation (ch. iii.)

Judicium
Parium.

The Judicium Parium,¹ or right of an accused person to be tried by a jury of his peers, so definitely laid down in Magna Carta, was frequently violated by the proceedings of the Court of Star Chamber, the declaration of Martial Law (ch. x.), and the like, (*see Liberty of the Subject*, ch. vii.), whilst the corruption of jurors (against which statutes were passed 1360, 1364, 1495 [11 Hen. VII.] and 1571 [13 Eliz.]), and the impanelling of irregular juries, (forbidden in the Bill of Rights), gave great opportunity for abuse of the system.

Immunity of
Juries.

Immunity of Juries.

Temp. Henry II. jurors giving a wrong verdict were subject to a writ of attain, *i.e.*, an appeal was made, and a fresh jury of twenty-four tried the case again; if they found a different verdict, the original jury was severely punished. This severity was due to the fact that when the jury were *witnesses of fact* a wrong verdict convicted them of perjury. In 1495 (11 Hen. VII., c. xxiv.) jurors who gave false verdicts were to be fined at the discretion of the judge, and to be incapable of serving again. A statute of 1571 also confirmed the writ of attain for false verdicts; this writ, though long practically obsolete, was not abolished until 1826 (6 Geo. IV.).

Fining Jurors.

Juries were frequently fined and imprisoned by the Star Chamber for giving verdicts in opposition to the wishes of the sovereign, *e.g.*, the jury which acquitted Sir Nicholas Throgmorton of Treason for having taken part in Wyatt's rebellion, were fined and imprisoned. In 1666 a Grand Jury was reprimanded by the Court of King's Bench for

¹ Magna Carta, sec. 39. Sel. Charters, 301.

returning a true bill against a prisoner for manslaughter instead of murder. The absolute immunity of jurors returning a verdict against the evidence or direction of the judge was established 1670, in *Bushell's case*; a jury, of which Bushell was foreman, acquitted William Penn and William Mead charged with a breach of the Conventicle Act, contrary to the direction of the Recorder of London, who thereupon fined each juror 40 marks. Bushell in default of payment was committed, but obtained his writ of Habeas Corpus, the return stating that he was imprisoned for giving a verdict "against the full and manifest evidence, and against the direction of the Court." This was held by Chief Justice Vaughan to be insufficient, on the ground that the judge is not competent to direct unless he has a knowledge of the *facts* of the case; these *facts* he only learns from the verdict of the jury.

Bushell's Case
1670.

Assize of Novel disseisin was a writ issued to the Sheriff, at the request of the person *disseised* or dispossessed of land, commanding him to summon a jury to decide whether the dispossession has been lawful, and to report to the Justices of Assize.¹ By *Novel disseisin*,
Magna Carta, sec. 18, the assize is to be taken in each county four times a year, by two Justiciaries, assisted by four knights, elected by the county²; this was reduced to once a year, 1217. By the Statutes of Merton, 1236 (20 Hen. III.), Marlborough, 1267 (52 Hen. III.), and Westminster 11, 1285 (13 Edward I.), "frequent and vexatious disseisins" were checked. The writ of *Novel disseisin* was abolished 1833 (3 and 4 Wm. IV.).

Assize of Mort d'ancestor, founded on the fourth *Mort d'ancestor*.

¹ Assize of Northampton, 5th Article. Sel. Charters, 152.

² Sel. Charters, 299.

article of the Assize of Northampton,¹ is a writ giving authority to the Sheriff to summon a jury to determine whether the plaintiff's ancestor was "seised" or possessed of the land in question on the day of his death, and whether the plaintiff is the rightful heir, and to report to the justices. It did not apply to lands devisable by will. Magna Carta contains the same regulation as to the holding of the assize as it does in the case of Novel disseisin. The assize was rendered nugatory 1660 (12 Car. II.)

Darrein Presentment.

Assize of Darrein Presentment, or last presentation, was a writ directing the Sheriff to enquire by a jury as to who was the last patron who presented to the Church then vacant, with regard to which there was a dispute. The assize was regulated in the same manner as the preceding ones by Magna Carta.² It became obsolete about the time of Anne, and was abolished 1833.

The Crown and the Courts.

RELATIONS BETWEEN THE CROWN AND THE COURTS.

The King, as the fountain of justice, was in early days supposed to be present in person at all judicial proceedings; as a matter of fact he often did preside and decide cases. By degrees, however, after the establishment of the Common Law Courts, the practice was discontinued, and, *temp.* James I., it was decided by Sir Edward Coke that the King had no power to hear cases. Although the King could not directly interfere in the course of justice, he could do so indirectly by influencing subservient judges, *e.g.*, Richard II. obtained by threats, 1387, an opinion from the judges that the Commission of Regency was illegal and those who

¹ Sel. Charters, 151. (See Appendix A.)

² Ib. 299, 403. (Prov. West., Art. 7.)

supported it traitors. James I. in the *Case of Commendams* (Appendix B.), ordered the judges to stay their judgment; this they refused to do, but afterwards made submission on their knees, and were reprimanded. Sir Edward Coke, who continued to assert the independence of the Bench, was dismissed from the Chief Justiceship. At last, however, the independence of the judges was established by a provision of the Act of Settlement, which enacted that judges should for the future hold office not during the King's pleasure, but "*quamdiu se bene gesserint*," and that they should be removed only upon the address of both Houses of Parliament.

The supreme *Appellate Jurisdiction* was at first vested in the Witenagemot, subsequently, *temp.* Henry II. (1178), in the *Concilium ordinarium*, thence it passed to the House of Lords, where it has remained ever since, in spite of the attempt of the Commons to deny the Lords the right of hearing appeals from Courts of Equity, 1675. (*Shirley v. Fagg*, ch. iii.)

Intermediate Courts of Appeal. From the Common Pleas, and the inferior Courts of Record, an appeal lay to the King's Bench, and thence to the Exchequer Chamber, (erected 1585 and re-modelled 1830—p. 58.) In 1534 certain Commissioners, called Delegates of Appeals, were appointed to hear appeals from the Ecclesiastical, Admiralty, and Colonial Courts; their appellate powers were transferred in 1832 to the Judicial Committee of the Privy Council (2 & 3 Wm. IV.); all these appellate powers were transferred by the Act of 1873 to the High Court of Appeal consisting of all the judges. Thence there is still a final appeal to the Lords.

Chief Enactments regulating Justice and Police
up to Edward I.—

Laws of Ini, *circ.* 690. Stubbs, Sel. Charters, 61.

„ Alfred, *circ.* 890. Ib. 63.

„ Athelstan, *circ.* 930. Ib. 67.

„ Edgar, 959—975. Ib. 70.

„ Ethelred, 978—1016. Ib. 72.

„ Canute, 1017—1035. Ib. 73.

„ Edward the Confessor. Ib. 77.

Statutes of William I. Ib. 84.

Separation of the Spiritual and Temporal Courts
by William I. Ib. 85.

Charter of Liberties of Henry I., 1100. Ib.
99, sq.

Charter regulating the County and Hundred
Courts, *circ.* 1108. Ib. 104.

Constitutions of Clarendon, 1164. Ib. 137, sq.

Assize of Clarendon, 1166. Ib. 143, sq.

Inquest of Sheriffs, 1170. Ib. 148, sq.

Assize of Northampton, 1176. Ib. 150, sq.

„ Arms, 1181. Ib. 154, sq.

„ the Forest, 1184. Ib. 157, sq.

Magna Carta, 1215. Ib. 296, sq.

Charter of the Forest, 1217. Ib. 349, sq.

Regulations for the Conservation of the Peace
by Watch and Ward, 1233. Ib. 362.

Ditto, 1253. Ib. 374.

Provisions of Oxford, 1258. Ib. 387, sq.

„ Westminster, 1259. Ib. 401, sq.

Regulations for Conservation of the Peace, 1264.
Ib. 411.

Dictum de Kenilworth, 1266. Sec. 37, 38, 40.
Ib. 425.

Statute of Marlborough, 1267.

„ Westminster I., 1275.

„ Rageman, 1276.

„ Gloucester, 1278.

„ Winchester, 1285. Sel. Ch., 469, sq.

Writ of Trailbaton, 1305.

CHAPTER III.

THE CENTRAL ASSEMBLY.

Central
Assembly.
Witenagemot.

A. *The Witenagemot* (the assembly of *Witan*, or wise men) grew out of the old tribal assembly mentioned by Tacitus,¹ and was the governing body of the nation under the Anglo-Saxon Kings. Before the supremacy of Wessex, 825, each kingdom had its own Witenagemot, but after that date the assemblies of the smaller Kings sank into the position of local courts, whilst the Witenagemot of Wessex became the National Council. It is a question whether the right of attendance at the Witenagemot was confined to those of higher rank,² or whether it was, in theory at least, open to all freemen.³ It is possible that there was no legal limitation of the right, for we find meetings of the *Witan* held in London and Winchester, attended by the citizens; but, however popular its constitution in theory, the difficulties of travelling, and the small weight attaching to the voice of an unknown freeman, caused it to assume in practice that aristocratic character which is presupposed by the very name⁴ (*Witan*); it was also quite distinct from the folkmoot, or assembly of the people. The meetings which were usually held twice a year (nearer the Norman Conquest three times, *i.e.*, at Easter, Whitsuntide and Christmas) were attended by members of the Royal Family, the archbishops,

Composition.

¹ Sel. Charters, 56.

² Canon Stubbs' theory.

³ Mr. Freeman's theory.

⁴ Thus reversing the statement of Tacitus:—"de minoribus rebus principes consultant, de majoribus omnes."

bishops, abbots, ealdormen, and the King's thegns,¹ the numbers varying from twenty to a hundred.² In a Witenagemot held at Winchester 934, and which may be taken as a fair type of ordinary meetings, there were present the King, four Welsh Kings, two archbishops, seventeen bishops, four abbots, twelve ealdormen, and fifty-two thegns; that this assembly is said to have promulgated a law *totâ populi generalitate*, is a proof that the Witan were regarded as representing the feeling of the nation, though they were in no way representatives in the modern acceptance of the term.³ Members of the Witenagemot received by a law of Ethelbert, *circ.* 600, a special protection whilst on their way to and from the meetings.⁴

The powers of the *Witan* though theoretically enormous, were practically greatly limited by a King of strong character, who, supported as he always was by his thegns, could lead them as he chose; and by the Norman Conquest the Witenagemot had become a Council representing the King rather than the nation.

The *Witan* in theory—

1. Elected the King and had power to pass over unfit persons (p. 6.)
2. Could depose the King for misgovernment (p. 12.)
3. Consented to grants of *folkland* (ch. vi.).
4. Declared war, and assented to treaties, *e.g.*, the Peace of Wedmore, 879, was made by King Alfred and King Guthrum, and *the Witan of all the English nation*.⁵
5. Taxes were levied and laws made with their

¹ Women were admitted to the meetings, *e.g.*, the King's mother, and abbesses were sometimes present.

² The largest number as given by Mr. Kemble is 106.

³ Kemble, Saxons in England.

⁴ Sel. Charters, 61.

⁵ *Ib.* 63.

counsel and consent, *e.g.*, "I then, Alfred, King of the West Saxons, showed these laws to all my Witan, and they said that it seemed good to them all to be holden."¹

6. In conjunction with the King they appointed and removed the great officers of state, both secular and ecclesiastical.

7. Regulated ecclesiastical matters, *e.g.*, tithes.

8. Raised, and superintended defences of the realm (ch. x.).

9. Formed a Court of Final Appeal (p. 85), and dealt with powerful offenders, who could be reached by no other means. It often exercised the power of outlawry, *e.g.*, Sweyn, 1051; Godwin.

*The Great Council.

B. *The Great Council.*

Composition.

Under the Norman Kings the Witenagemot became the *Great Council* (*magnum*, or *commune concilium*), a feudal court attended by the tenants in chief. In theory all the holders of land were entitled to attend, but they appeared only on very rare occasions, as at Salisbury 1086; practically its members were the magnates, including the bishops, who, until the Constitutions of Clarendon declared them members by tenure of barony, still sat as wise men. Under William I. it met thrice a year, but though theoretically its powers were as great as those of the Witenagemot had been, the despotism of the Norman Kings caused its assent to legislation and taxation to be merely formal. As a Court of Justice it tried offenders of rank, *e.g.*, Waltheof, 1076, though many of its judicial functions were performed by its Committee, the *Curia Regis* (p. 33). It continued, like the Witenagemot, to elect the King, *e.g.*, William Rufus, Henry I., Stephen, Henry II. Under Henry II. its feudal

¹ Sel. Charters, 62.

character was complete ; it was attended by arch-^{Its Feudal Character.}bishops, bishops, abbots (all by tenure of barony), earls, barons, knights, and tenants in chief ; on special occasions, *e.g.*, at the Assize of Clarendon, 1166, all the tenants in chief appeared, whilst in theory the members were still all the landowners. Henry II. summoned the National Council two or three times every year for general deliberation, and all the legislation of the period was with its counsel and consent, though there is no instance of a debate on taxation until the end of Richard I.'s reign. The place of meeting varied as convenience suggested. Henry also contrived to limit the numbers of the Council by issuing special summonses addressed to individuals, by which expedient he was enabled to introduce judges, and lawyers, who had not the qualification of tenure. By *Magna Carta* it was provided that the archbishops, bishops, earls, and greater barons should be summoned "by writ directed to each severally" and all other tenants *in capite* by a general writ addressed to the Sheriff of the shire ; forty days notice of the time, place, and cause of meeting was to be given, and the vote of those present was to bind the absent. Under John and Henry III. the^{Powers temp. John.} powers of the Great Council in taxation, legislation, and deliberation increased largely, and its power at the time of Edward I.'s organisation was a real one. Representatives of the Counties had been summoned as early as 1213, and in 1265, representatives of the boroughs appeared also (*see below*) ; by 1295, the National Council contained all the elements of a modern Parliament, with the addition of the representatives of the Clergy.

C. PARLIAMENT (name first applied to the Parliament

Idea of
representation.

National Council by Matthew Paris 1246¹). The idea of representation, which had long been familiar to the people for other purposes, became gradually connected with the central assembly; the lesser barons and landowners found personal attendance inconvenient, and in 1213 occurred the first instance of representatives of the shires being summoned to the National Council; from this time the representative system gradually develops (*see below*), though Parliaments were frequently held to which representatives were not summoned at all, or were summoned imperfectly (*see House of Commons*). In 1295, however, assembled the famous *Model Parliament*, the precedent of which has been followed ever since.

Model Parlia-
ment 1295.

A personal writ of summons was sent to archbishops, bishops, abbots, earls and barons; the priors of every cathedral and the archdeacons of each diocese were directed to appear in person by writs sent through the bishops; the chapter of each cathedral was to send one representative, the parochial clergy of each diocese were to send two representatives; two knights from each shire, two citizens from each city and borough were also to be sent with full powers on behalf of their constituents "*ad faciendum quod tunc de communi concilio ordinabitur*." This Parliament was thus an assembly of the estates of the constituent classes of society, as well as representative of local interests, and the English Parliament has ever since combined a union of the two principles of class and local representation. To Edward I. the organisation of our Parliament² on a regular basis is due; *temp.*

¹ Sel. Charters, 328.

² "He found it a Council occasionally meeting to grant supplies to the King, and to urge upon him in return the obligation of observing the charter to which he had sworn; he left it a body representing the nation from which it sprung, and claiming to take part in the settlement of all questions in which the nation was concerned."

Edward III. the division into two Houses, took place; the knights of the shire, who at first sat with the barons, gradually drew off from them towards the burgesses, owing to community of interests (*see below*), and in 1333 the division had definitely taken place¹; from this reign too the attendance of the clergy grew irregular, (owing to their preference for Convocation—ch. ix.) and in the fourteenth century ceased altogether, (except in the case of the spiritual peers,) the main body of the clergy being represented by the members of the Lower House whom they had joined in electing; by this action of the clergy England has had two legislative Houses only instead of three, and Parliament has thus attained a strength and unity of organisation denied to the assemblies of other countries.

Division into two Houses.

Bicameral system in England.

The Powers of Parliament grew rapidly from 1295, especially the powers of the Lower House (*see below*). They were:—

Powers of Parliament.

(a) *Taxative*. The acknowledgment of the fact that all who paid taxes ought to be consulted about the levying of them. In 1297 (*Confirmatio Cartarum*) and 1300 (*Articuli super cartas*) Edward I. surrendered the power of arbitrary taxation, whilst the two illegal methods of raising money by talliage on the royal demesne, and by levying import duties by special agreement with the merchants, were given up by Edward III. 1340 1362 (ch. v.)

Taxative.

(b) *Legislative*. The necessity of the concurrence of both Houses in legislation is recognised 1322, when it is declared that matters concerning the whole realm “shall be treated, accorded, and established in Parliament by our lord the King, and by the assent of prelates, earls and barons, and the

Legislative

¹ Hallam gives the date of the definite division as 1327.

commonalty of the realm" (ch. iv.). "Parliament has the supreme power of legislation, except over the Colonies, which are either (in the case of conquered Colonies) governed by the King in Council, or have legislatures of their own.

Judicial.

(c) *Judicial*, vested in the Lords alone by a declaration of 1399. (*See Impeachment*).

Deliberative.

(d) *Deliberative*.

Parliament was frequently consulted by Edward III. on questions of peace and war. It frequently asserted its power to alter the succession (p. 10) and to appoint regencies (p. 27) on the occasion of the King's infancy or infirmity, and its power is clearly marked by the anxiety of Kings to obtain a Parliamentary title, whilst even Henry VIII. was eager to win its sanction to his arbitrary measures.

Summons and
Duration of
Parliament.

Summons, Duration, and Dissolution of Parliament.

It is the King's prerogative to summon Parliament, which is opened either by the Sovereign in person, or by commission under the Great Seal, a royal speech being made or read on the occasion. The only instances of Parliament meeting by its own authority were the *Convention Parliaments* of 1660 and 1688, both of which were subsequently legalised by Acts of Parliament. In January, 1789, and January, 1811, on the occasion of George III.'s insanity, the Parliament was opened by commission, to which the Great Seal was affixed by the Chancellor on the resolution of both Houses. In former times it often happened that a King omitted to summon Parliament, especially if rich enough to dispense with supplies, and one of the ordinances of 1311, is to the effect that Parliaments shall be held once or twice a year, whilst statutes were passed, 1330 and 1362, to the effect that Parliament

Convention
Parliaments
1660, 1688.

Parliaments of
1789 and 1811.

Omission to
Summon
Parliament.

should be held annually, or oftener if need be, for the redress of grievances. By the statute of 1330, it was provided that this annual Parliament need not be a new one¹; there was also petitions on the subject presented by the Commons, 1376. Notwithstanding this legislation there were frequently long intermissions, *e.g.*, from 1474 to 1483 there was only one Parliament (sitting for forty-two days 1478), during the last thirteen years of Henry VII. there was only one, 1504. Henry VIII. from 1515 to 1523 ruled without a Parliament; James I. from 1611 to 1614, and from 1614 to 1620, endeavoured to rule without a Parliament, by raising money illegally (*ch. v.*), and Charles I. was enabled by the same exactions to govern arbitrarily for eleven years, 1629 to 1640. Parliament used at first to sit until dissolved by the King, except in the event of the demise of the crown,² but in February, 1641, the Long Parliament passed the *Triennial Act*, which provided that a Parliament should be *ipso facto* dissolved after three years from the first day of its session, and that if the King neglected to call a new one for three years, the Chancellor, or failing him the peers, or in the event of their neglect, the sheriffs and mayors might issue writs, and if all failed to perform this duty the electors might proceed to choose representatives; the new Parliament was not to be prorogued for fifty days after meeting, except with its own consent. The Act which had been already infringed by the Long Parliament itself, was repealed in 1664, (though it was

Annual
Parliaments

Long intermis-
sions.

First Triennial
Act 1641.

¹ As a matter of fact, however, Parliaments continued to be elected annually with rare exceptions until Henry VIII.

² The Long Parliament, however, was not dissolved at the death of Charles I., nor was the Parliament of James II. after his abdication.

Second Triennial
Act 1694.
Septennial Act
1716.

provided that Parliament must not be intermitted more than three years), and the Pensionary Parliament sat for seventeen years. By the Bill of Rights, 1689, it was declared that "for the redress of grievances, and for the amending, strengthening, and preserving of the laws, Parliament ought to be held frequently," and in 1694, William III. gave his consent, which he had previously withheld, to a *Triennial Bill*; in May, 1716, the limit of three years was increased to seven by the *Septennial Act*; this measure, though dangerous as the act of a body *prolonging its own existence*, was necessary at the time owing to the disturbed state of the country, and has since been found beneficial, though motions have occasionally been made for its repeal, e.g., Sir Francis Burdett, 1818, advocated annual Parliaments; Mr. O'Connell, 1830, triennial Parliaments. Formal motions were made for its repeal 1818; by Mr. Tennyson, 1833, 1834, 1837; and by Mr. Crawford, 1843, but were lost by large majorities. By an Act of 1706, (in force until 1867) the demise of the Crown was not to dissolve Parliament for six months, and by an Act of 1797, if the King died after Parliament was dissolved and before a new one was elected, the old one was revived for six months. At the present day an annual session of Parliament is necessary to vote supplies, and to renew the Mutiny Act (ch. x.).

Relations of
Parliament to
the Crown.
Edward I.

Relations of Parliament to the Crown from 1295.
Temp. Edward I. The crown comes into collision with Parliament on the subject of taxation (ch. v.). Edward is obliged to issue the *Confirmatio Cartarum* (1297), the *Articuli Super Cartas* (1300), and the Confirmation of the Charters at Lincoln (1301).

Edward II.

Temp. Edward II, Parliament, acting more

immediately through the Baronage, appoints the twenty-one Lords Ordainers as a Committee of Reform, and in Jan., 1327, deposes the King as "incompetent to govern," at the same time renouncing its allegiance.

Temp. Edward III. Parliament, and especially Edward III. the Lower House, consolidates its power; the King has to acknowledge the illegality of arbitrary taxation (1340—1362), and the necessity of the concurrence of the two Houses in legislation, established in 1322, is confirmed.

Temp. Richard II. Parliament appoints a Committee of Regency, 1377, and a Committee of Reform, 1386; this is declared illegal by the judges when consulted by the King. In 1397, Richard defies Parliament by his prosecution of Haxey (p. 103). The Parliament, which was probably packed, and possibly intimidated by the presence of troops, proves extremely servile, and grants the King a revenue for life. In 1398, the power of Parliament (sitting at Shrewsbury) is delegated to eighteen Commissioners (twelve peers and six commoners); these Commissioners were creatures of the King, whose absolutism grows so intolerable that in Sept., 1399, he is forced to resign, and is formally deposed by the Parliament as "useless and incompetent" (p. 13). Richard II.

Temp. Henry IV. Distrust of the King is shown Henry IV. by a request (1404, 1406, 1410) that the King's Council should be nominated in Parliament (p. 34), and in 1407 was established the rule that the King must not take notice of matters pending in Parliament until a decision has been arrived at, and the matter formally brought before him. In 1408 the King accepts a petition of thirty-one articles "hardly inferior to the Petition of Right."

- Henry V. *Temp.* Henry V. The relations between the King and Parliament were most cordial.
- Henry VI. *Temp.* Henry VI. The Commission of Regency named by Parliament, 1422.
- Edward IV. *Temp.* Edward IV. and Richard III. Parliament is unimportant, and is rarely summoned.
- Tudors. Under the Tudors, Parliament is at first entirely subject to the King; it is rarely summoned by Henry VII., or during the first part of the reign of Henry VIII. *Henry VIII., however, indirectly acknowledges the power of Parliament in the State by seeking to obtain its sanction to his arbitrary acts, and in 1539, Parliament declares that the King's proclamations have the force of law (repealed 1547). After Edward VI., the Parliament gradually begins to reassert itself, and the Commons come into collision with Elizabeth on several occasions, *e.g.*, on the question of the Queen's marriage and the settlement of the succession, 1566; on Ecclesiastical matters, 1571, 1593 (*Strickland's Case and Morice's Case*, pp. 104—5); and on Monopolies (ch. v.), 1601.
- Elizabeth.
- The Stewarts. Under the Stewarts, Parliament gradually becomes more dissatisfied and more rebellious, and is in perpetual collision with the King, (who tries ineffectually to govern without it), *e.g.*, the Remonstrance against the Book of Rates (ch. v.), the abuse of Proclamations (ch. iv.), and the High Commission Court, 1610 (p. 51); the imprisonment of members by the King, 1614; the Great Protest against the violation of the liberties of Parliament, torn out of the journals of the House by the King himself, Dec., 1621 (p. 105); the violation of liberties by Charles I., leading to the Petition of Right, 1628; the Grand Remonstrance, Nov. 1641; the supremacy of the Parliament, and the death of the King.
- James I.
- Charles I.

At the Restoration, the supreme power of the Commons had been completely established. Parliament is intensely loyal, though in 1679 it refuses to recognise the King's right to grant a pardon in lieu of an impeachment (Lord Danby's). The system of creating rotten boroughs, and of bribery, gave the Crown at this time an immense control over Parliament, and the first Parliament of James II. was packed and servile, but James' subsequent conduct estranged all parties from him, and the throne was declared vacant (p. 13).

Under William III., *the Bill of Rights* (*see Appendix A.*) contains several provisions for the limitation of the prerogative, and the increase of the power and independence of Parliament, though the King three times asserted his right to refuse his assent to obnoxious bills. Under Anne occurred the last instance of the royal assent being refused to a bill. The first two Hanoverian Kings had little influence over Parliament; George III., however, made several attempts to assert the supremacy of the Crown, and endeavoured to control Parliament both by bribery (p. 138), and coercion. In 1763, several members of the Commons were deprived of pensions and commissions for voting against the King, and in 1770, George actually declared that he would have recourse to the sword "rather than yield to a dissolution of Parliament." In 1780, Mr. Dunning carried his famous motion that "the power of the crown has increased, is increasing, and ought to be diminished." Since the Reform Act of 1832, (p. 141) the relations of the Crown and Parliament have been most cordial, and indeed, since the Revolution of 1688, the development of ministerial government has rendered any serious collision between the two

Charles II.

James II.

William III.

Anne.
The Hanoverians.

George III.]

impossible; it is now the established maxim that "the King can do no wrong"; "the King reigns, but the Ministers govern" (see *Party Gov.*, p. 142).

PRIVILEGE OF PARLIAMENT.

A. Common to both Houses:

1. *Freedom from arrest and molestation*, originating in a law of Ethelbert, 600,¹ extended formerly to members, their servants, and their goods; though valid against all civil process, this privilege did not apply to cases of treason, felony, or breach of the peace; its duration is from forty days before to forty days after the session in the case of a member of the lower House; in the case of a peer it is perpetual. The privilege, as extended to the servants of members, was so much abused that in 1770 it was confined to the persons of members themselves.

Historical illustrations and instances:—

1290. Edward I. refused to allow the *Master of the Temple* to distrain for the rent of a house held of him by the *Bishop of St. David's*, as "not fitting in time of Parliament."

1315. Edward II. declared the arrest of the *Prior of Malton* during the session "to the prejudice of the crown."

1404. Commons petition Henry IV. for treble damages in case of molestation; this is refused, though the right of immunity is recognised.

1405. *John Savage* mulcted in a double fine for assaulting *Richard Chedder*, a member's servant.

1429. *William Lark*, a member's servant, imprisoned for damages, was released during the session at the petition of the Commons.

¹ "If the King call his people to him, and any one there do them evil, let him compensate with a two-fold *bot*, and 50/. to the King."—*Sel. Charters*, 61. See also *Laws of Canute*, cap. 83 (*Sel. Charters*, 74).

Privilege of
Parliament.
Common to both
Houses.
Freedom from
Arrest.

Instances.

Master of the
Temple, 1290.

Prior of Malton,
1315.

Richard Chedder,
1405.
William Lark,
1429.

1433. A statute declares double damages due for an assault on a member going to Parliament.

1453. *Thomas Thorpe*, Speaker, arrested at the suit of the Duke of York, fined and sent to the Fleet. Thomas Thorpe,
1453. The Commons demanded his release from the King and Lords. The Lords consulted the judges who, while admitting that in such cases release was usual, to enable the member to attend to his Parliamentary duties, declined to answer on the ground that the High Court of Parliament was "so high and mighty in its nature that it may make law, and that that is law it may make no law." The Lords, however, refused to give effect to the privilege, owing to Thorpe being the Duke of York's enemy, and a Lancastrian.

1460. *Walter Clerk*, member for Chippenham, imprisoned for a fine due to the King, and damages, Walter Clerk,
1460. released on petition of Commons.

1477. *John Atwyll*, member for Exeter, arrested for debt, released on petition of Commons by a writ of *supersedeas* (i.e., to discharge the prisoner from custody). John Atwyll,
1477.

During this period imprisoned members and their servants were released (1) by special Act of Parliament, if imprisoned in execution of judgment; (2) by writ of privilege, issued by the Chancellor, if imprisoned on *mesne process* (i.e., on any writ issued between the beginning and end of a suit). In 1543, however, in the famous case of *George Ferrers*, a member imprisoned as surety for a debt, George Ferrers,
1543. the Commons demanded the release on their own authority through their sergeant; the sheriffs refused the demand and were imprisoned for contempt by the House, which likewise held a writ of Privilege from the Chancellor unnecessary, declaring that the orders of "the nether House" could

be carried out without a writ by the sergeant "whose mace was his warrant." The action of the Commons was supported by Henry VIII.

Smalley, 1575.

1575. *Smalley*, a member's servant imprisoned for debt released by the sergeant; he was subsequently fined and imprisoned for having obtained his arrest fraudulently as a means of escaping the debt (p. 114).

Sir Thos.
Shirley, 1604.

1604. *Sir Thomas Shirley* imprisoned on execution for debt; on the meeting of Parliament the House demanded his release, which was refused by the Warden of the Fleet, who feared that he would become liable for his prisoner's debt. The Warden was committed for contempt, but would not give up Shirley until the King interfered. An Act was consequently passed, (1604) that those who had the custody of a member of Parliament, released by privilege, should not be liable to the creditors, and that a new writ of execution might be sued out by the creditor at the expiration of the privileged period; by this Act a legal recognition is given to the privilege of freedom from arrest, and to the right of Parliament to release privileged persons, and to punish those to whom the arrest is due.

Earl of Arundel,
1625.

1625. *Earl of Arundel*, imprisoned by order of Charles I. for allowing his son to marry a lady of royal blood without the King's permission; the Lords denied the legality of the imprisonment of a member of their body, by any other authority than that of the House, except for treason, felony, or breach of the peace; and the King had to give way. In Jan., 1642, the attempted arrest of the five members by the King precipitated the crisis; the Commons declared the King's action a breach of privilege and his conduct "false, scandalous, and illegal."

Five Members,
1642.

The extension of this privilege to the offence of Contempt of Court is doubtful; in 1572 *Lord Cromwell*, arrested for contempt, was released by the Lords who, however, declared that the case was not to be a precedent; in 1757 the Lords declared that privilege did not cover the refusal to obey a writ of *Habeas Corpus*; in later times Parliament has not interfered in the case of members punished for Contempt of Court, *e.g.*, Mr. Wellesley 1831, Mr. Charlton 1837, Mr. Whalley 1873, though its right to do so if necessary is retained. In 1763 the Commons held in the case of Wilkes that seditious libel was not covered by privilege. At the present time this privilege extends only to the persons of members, and does not protect their goods; nor does it cover cases of treason, felony, breach of the peace, seditious libel, or bankruptcy (Bankruptcy Act, 1869.)

2. *Freedom of speech and debate* existed from very early times and was frequently confirmed.

Freedom of speech and debate.

The violation of the privilege was foreshadowed in the arrest of *Henry Keighley*, the Speaker, 1301, for presenting articles of reform to Edward I.; and in the imprisonment of *Peter de la Mare*, 1376, by John of Gaunt, for his conduct in the Good Parliament.

Henry Keighley, 1301.

Peter de la Mare, 1376.

In 1397 *Sir Thomas Haxey* was imprisoned, by order of Richard II., and found guilty of treason, for having introduced a Bill to regulate the expenses of the royal household; the proceedings against him were reversed in 1399 by Henry IV. and the Lords, and the privilege of freedom of discussion was expressly recognised; being again confirmed 1407.

Thomas Haxey, 1397.

In 1451 *Thomas Young* was imprisoned for a motion to declare the Duke of York heir to the

Thomas Young, 1451.

Crown ; having complained to the Commons of his arrest on a favourable opportunity, 1455, when the Duke of York was Protector, the case was referred to the Lords, and reasonable compensation was decreed by the King.

Richard Strode,
1512.

1512. *Richard Strode*, having moved for the regulation of the tin mines in Cornwall, was imprisoned at the instance of the Stannary Court (p. 61). Released by writ of privilege, and an Act passed declaring all suits in consequence of words spoken in Parliament void.

Elizabeth's
Action.

✓ From 1541 the privileges of free discussion, free access to the King, and freedom from arrest, were formally claimed by the Speaker at the commencement of each Parliament, and were formally recognised by the Sovereign ; Elizabeth, however, frequently violated the rights ; in 1566 she forbade the settlement of the succession to be discussed, but had to withdraw the prohibition on its being moved contrary to privilege by *Paul Wentworth*. On the Speaker making the usual claim for liberty of speech in 1571, he was told by Sir Nicholas Bacon, the Lord Keeper, that it was the Queen's will that the Commons should " meddle with no matters of State but such as were propounded to them," and

Mr. Strickland,
1571.

Mr. Strickland, having introduced bills for ecclesiastical reforms, was forbidden by Elizabeth to attend Parliament. *Christopher Yelverton*, however, a celebrated lawyer, successfully maintained that this was a breach of privilege, and the Queen was forced to give way in the same Session. *Mr. Bell* was summoned before the Council for introducing the subject of monopolies Feb., 1588. *Mr. Cope* was imprisoned by the Queen for advocating ecclesiastical reform, and at the same time *Peter Wentworth* was sent to the Tower for demanding

Mr. Bell, 1588.

Mr. Cope, 1588.

Peter
Wentworth.

whether a member might not discuss points of grievance freely and without danger.

In 1589 *Sir Edward Hobby* was reprimanded for introducing a Reform Bill. In 1593 *Lord Keeper*

Sir Edward Hobby, 1589.

Pickering in answer to the usual demand by the Speaker, *Sir Edward Coke*, for freedom of debate replied on the Queen's behalf that the privilege of the House consisted in saying aye or no and was not "to speak every one what he listeth, or what cometh into his brain to utter;" in the same year *Peter Wentworth* and *Sir Henry Bromley* were imprisoned for a petition on the succession, and *Morice*, a lawyer, for a Bill for the reform of the Ecclesiastical Courts.

Sir H. Bromley, 1593.

Morice, 1593.

1614. *Thomas Wentworth*, *Christopher Neville* and *Sir Walter Chute* were imprisoned for words spoken in the House, and other members were dismissed from the Commission of the Peace.

Thos. Wentworth, 1614.

1621. James I. committed *Sir Edwin Sandys* ostensibly for speeches in the House, forbade the House to meddle with the mysteries of State, and declared that the privileges of Parliament were derived from "the grace and permission of his ancestors"; in Dec., 1621 the Commons drew up a protest that freedom of debate is necessary to treat "the arduous and urgent" affairs of the State; in consequence of this James dissolved Parliament, tore the protest out of the journals with his own hand, and imprisoned *Sir Edward Cope*, *Sir Robert Phipps*, *Mr. Pym*, and *Mr. Selden*.

Sir Edwin Sandys, 1621.

Protest of 1621.

In 1630 *Sir John Eliot*, *Denzil Hollis*, and *Benjamin Valentine* were imprisoned by the King's Bench for words spoken in Parliament, and *Strode's Act* was declared to apply only to the particular case; these proceedings were declared illegal 1641, and reversed by an Act of 1667, which made *Strode's*

Sir John Eliot, 1630.

Act general; the judgment of the King's Bench was also formally reversed by the Lords on a writ of error 1688. By the Bill of Rights it is declared that "the freedom of speech and debates, or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament." From this time interference with liberty of speech was indirect, *e.g.*, the cancelling of the commissions of *General Conway* and *Col. Barré* by George III.

Secresy of
Debate-

3. Secresy of Debate.

In early times it was very important that the King should not know what was being debated.

Sir E. Dering.

Authorised publication of debates allowed by the Long Parliament 1641; but not unauthorised, *e.g.*, *Sir E. Dering* expelled from the House and imprisoned for printing his own speeches. In 1680 votes and proceedings were ordered to be printed under the direction of the Speaker, but the right was abrogated 1694. After the Revolution various attempts were made to restrain the publication, but debates were frequently published without the names of the speakers, or with initials only; these reports were very imperfect as notes had to be taken by stealth. In 1738 the Lower House passed a resolution against any publication of debates whatsoever; in 1771, the names of the speakers having been given in several papers, a complaint was made to the House by Col. Onslow; and six printers were summoned to appear before the House; one, by name *Miller*, failed to attend and was arrested by a messenger, who was in his turn arrested for assault, and both were brought before Lord Mayor Crosby, and Aldermen Oliver, and Wilkes, the latter of whom was encouraging the resistance of the printers to Parliamentary privi-

Miller's Case.

eges by every means in his power ; the magistrates discharged Miller and committed the messenger ; for this they were sent to the Tower by the House. From this time the publication of debates, though in theory a breach of privilege, has been encouraged. The publication of division lists was declared a breach of privilege 1696, but they have been regularly published by Commons since 1836, by the Lords since 1857. In 1868, in the case *Wason v. Walter*, the right of a newspaper to publish reports of debates was established (*see Libel*, ch. vii.)

Division Lists.

Wason v. Walter.

Exclusion of strangers was at first very strict, owing to the fear that a stranger might inform the King of the proceedings in Parliament. After the Restoration the rule was somewhat relaxed, though strangers could be excluded on the motion of one member ; in 1770 they were excluded from the Lords, during a discussion on the impending war with Spain, on grounds of expediency ; they were frequently excluded from Parliament during the American war, thus interrupting the report of debates. In 1845, strangers were allowed to be present in the galleries, and since 1875 can only be excluded by a resolution of the House.

Exclusion of strangers.

4. *Freedom of access to the Sovereign.*

Freedom of access to the Sovereign.

The Peers, as hereditary counsellors of the crown, enjoy an *individual* right of access at any moment ; the Commons have only a *collective* right through the Speaker. This privilege, which is of very early origin, has since 1541 been always claimed by the Speaker, together with those of freedom from arrest and of debate.

5. The sovereign is bound to put *the most favourable construction* on everything done in Parliament, and can take notice of nothing pending in Parliament until a decision has been arrived

Favourable construction.

at, and the matter brought officially before him,
1407.

Right of deciding
Contested
Elections.

6. *Right of deciding Contested Elections.*

Peers have the right of deciding the cases of representative Peers. The right of deciding Parliamentary elections was at first vested in the King and Council, *e.g.*, 1319, *Sir W. Martin*, a duly elected knight of the shire of Devon, complained to the Council that another name was substituted by the Sheriff in the return; in 1362 a dispute about the Lancashire election was settled by the King. In 1384 a petition was presented by the borough of Shaftesbury to the King, Lords, and Commons, complaining that the Sheriff of Dorsetshire had made a false return by substituting the name Thomas Camel for Thomas Seward.

Seward's Case,
1384.

In 1404 Commons demanded an inquiry into an alleged false return by the Sheriff of Rutland; the Lords held the enquiry, and declared Thomas Thorpe, for whom the Sheriff had substituted William Ondeby, duly elected.

Thorpe's Case,
1404.

1410. Right of enquiry into contested elections given to Justices of Assize.

The right of enquiry was subsequently assumed by the Commons.

1553. A Committee of the Lower House, after due enquiry, declared *Dr. Nowell* incapable of sitting in Parliament, owing to his being a member of Convocation.

Nowell's Case,
1553.

1586. A second writ was issued by the Chancellor to the county of Norfolk owing to some informality in the first election. The Commons, in spite of Elizabeth's prohibition, and declaration that the matter belonged to the Lord Chancellor, held an enquiry, and declared the first election good.

County of
Norfolk, 1586.

1604. James I. arrogated to himself power over

elections even so far as to decide what kind of man should be chosen. The electors of Buckinghamshire returned *Sir Francis Goodwin*, an outlaw; *Goodwin's Case*, James had a second writ issued, and *Sir John Fortescue* was elected; the Commons, however, declared Goodwin's election valid, and refused to refer the matter to the judges; eventually a new writ was issued, both the previous elections being regarded as void; this was a practical victory for the Commons, and was the last occasion on which their right in the matter of elections was called in question; it was further legally recognised in 1674 in the case of *Barnardiston v. Soame*, in *Onslow's case* 1680, and in *Prideaux v. Morris* 1702, and by a statute of 1695.

In 1674 the Sheriff of Suffolk, *Soame* by name, made a double return for the county, upon which *Barnardiston*, one of those returned, sued the Sheriff for damages and obtained a verdict; this verdict was quashed, on a writ of error, both by the Court of Exchequer Chamber and the House of Lords, but the Commons nevertheless committed *Soame* for making the double return. In 1695 the illegality of a double return was declared by statute. From this time the Commons decided all election questions by Committees of the House; the right was much abused for party purposes, and in 1770 *Grenville's Act* transferred the settlement of controverted elections to a Select Committee of thirteen sworn members, selected by the sitting members and the petitioners, from forty-nine chosen by ballot; it was found possible, however, to influence the construction of the Committee, and the abuses continued. By an Act of Sir Robert Peel, 1839, the Committee was reduced to six, and afterwards to five, nominated by a general Committee of

Barnardiston v. Soame, 1674.

Grenville's Act 1770.

Peel's Act, 1839.

Elections. In 1868 the right was surrendered by the Commons and vested in the common law judges, an Act of 1880 providing that cases must be tried by two judges; the peers, however, still retain the privilege.

Ashby v. White, 1702. In 1702 in the cases of *Ashby v. White*, and of the *Aylesbury men*, the Commons claimed the privilege of determining the rights of *electors*, as well as of deciding contested elections; this led to a quarrel between the Lords and the Commons, the Upper House condemning the conduct of the Lower in committing the Aylesbury burgesses for bringing actions against the returning officer; the dispute was ended by a prorogation though the question was left undecided. (*Appendix B.*)

Right of determining the order of business.

7. *Right of settling the order of business* in their respective Houses. The question arose under Richard II. when the judges declared that this right did belong to Parliament. It was formerly important, as, if it had belonged to the Crown, the King might have obtained his supplies at the opening of the Session, and then dissolved.

Special Privileges of the Lords.
Voting by Proxy.

B. *Special privileges of the Lords.*

1. *Voting by proxy.* In early times this right was granted by licence from the King, and, up to the 17th century, Peers were often represented by men who were not members of the House, but from that time the proxy of a temporal Peer could only be given to another temporal Peer, and that of a spiritual Peer to a spiritual Peer, whilst the number of proxies to be held by any one individual was restricted to two. The right was given up 1868 as it was found to encourage Peers to absent themselves from Parliament.

Protests.

2. *Right of dissentients to record a protest* against any Act in the journals of the House. This privilege

dates from the middle of the 16th century, though it was not general until in 1641 it was formally claimed by six Peers; there are instances in earlier history of protests by the spiritual lords against the statutes of *præmunire* and *provisors*.

3. *Right of originating Bills* concerning the Peerage, such as the restitution of honours.

Right to originate Bills affecting the Peerage.

4. Every member of the House of Lords is entitled to receive his writ of summons. Settled by Lord Bristol's case (1625) to whom a writ was refused by Charles I. The Peers, however, would not sit without him, and the King had to send the writ, though he privately forbade the Earl to obey it.

Right to a Writ of Summons.

5. *Right of killing a deer* in the King's forest on the way to and from Parliament.

Obsolete Right of killing one of the King's deer.

6. Peers are entitled by an obsolete statute of 1275 to heavy damages for *scandalum magnatum*, or words spoken in their derogation.

Scandalum magnatum.

7. All Peers, except spiritual Peers,¹ have the right of being tried by their Peers in cases of treason and felony; the trial is by the whole House if sitting, if not sitting, by the Court of the Lord High Steward (p. 60). On a charge of misdemeanour a Peer is tried by an ordinary jury.

Right to be tried by Peers.

8. Right of demanding the advice and assistance of the judges.

Right of demanding the aid of judges.

C. *Privileges peculiar to the Commons.*

Powers over money.

Privileges peculiar to the Commons.

(a) *The right of originating all money bills.* This was established 1407 when the Lords named certain subsidies as necessary for the defence of the kingdom, and the Commons declared their action a breach of privilege. In 1593 a suggestion of the Lords that three subsidies should be granted

Initiation of Money Bills.

¹ In 1340, however, the Lords held that John Stratford, Archbishop of Canterbury must be tried by his Peers.

to the Queen, called forth considerable hostility from the Commons, who also, in 1640, procured an acknowledgment from the Lords that the Lower House had the sole right of originating money bills. In 1661 the Commons refused to assent to a Bill for paving the streets of Westminster, which had begun in the Lords, on the ground that as it had a charge on the people it ought to have originated with them. By degrees the Commons increased their privilege by establishing that the Lords could not amend a money Bill in any way, but had only the power of acceptance or refusal. In 1671 the Lords altered the rate of duty on sugar, this the Commons declared a breach of privilege. They subsequently established that all bills, which either directly or *indirectly* deal with taxation or supply, are money bills. An outcome of this privilege was the unconstitutional process of "*Tacking*," i.e., of tacking on to a Money Bill another Bill which they feared would otherwise be thrown out by the Lords; when this course was adopted, the Lords were obliged to pass the obnoxious Bill, unless they chose to refuse the supplies altogether, which would have greatly inconvenienced the King and the nation; this course of action which occurred in 1692 and 1699 was declared by the Lords to be dangerous to the constitution 1702. From 1688 to 1860 when the Lords threw out Mr. Gladstone's Bill for the repeal of the paper duty, there is no instance of the rejection of a Money Bill by the Upper House, although in 1762 the Lords divided on the Wines and Cider Duties Bill.

"Tacking."

Appropriation of
Supplies.

(b) *Appropriation of Supplies* giving the House entire control over the executive.

In Matthew Paris' account of a debate in the National Council (Sel. Charters, 368), the system

of appropriation is foreshadowed. Henry III. in 1242 granted of his own will, and with the counsel of all his baronage, that all the money coming from the "thirtieth" voted to him should be safely deposited in the King's castles in the keeping of four magnates, (the Earl of Warenne and others), by whose view and counsel *the money should be spent, when necessary, for the advantage of the King and the realm.*

The first instance occurs 1353 when the grant on wool was to be applied for the purposes of the Scotch war; other instances of appropriation occur under Richard II., and the Lancastrian Kings, *e.g.*, the customs of tunnage and poundage were usually appropriated to the naval expenditure,¹ and in 1404 a subsidy was appropriated to the defence of the realm. Notwithstanding the importance of ensuring that the money voted by Parliament should be used for the good of the nation, and not squandered at the caprice of the sovereign, appropriation of the supplies did not become the rule until the reign of Charles II., although in 1624 a sum had been appropriated for the defence of the Palatinate, whilst another case occurred 1641. In 1665 a sum of £1,250,000, granted by the Commons, was, in spite of the vehement opposition of Lord Clarendon, appropriated to the purposes of the Dutch war, at the instance of Sir G. Downing; the principle, however, was not finally established until after the Revolution of 1688, for Charles not unfrequently misappropriated the sums voted to his own use. "Since that time," says Mr. Hallam, "the Lords of the treasury, by a clause annually repeated in the Appropriation Act of every Session, are forbidden by severe penalties to order by their warrant any moneys in the Exchequer so appropriated from

Instances of
Appropriation,
1624, 1641.

¹ Stubbs, Const. Hist., iii., 264.

being issued for any other service, and the officers of the Exchequer to obey any such warrant." This direct control of the Commons over the expenditure, and the knowledge that the sums voted must be applied to the purpose for which they are intended, has prevented any want of liberality in the grants for the public service since the Revolution.

Audit of Accounts.

(c) *Audit of Public Accounts.* In 1340 and 1341 commissioners were appointed at the request of Parliament to audit the accounts of the collectors of the subsidy on wool; in 1376 and 1377 auditors were demanded, and in the latter year the first Parliamentary treasurers, John Philipot and William Walworth, were appointed. After some objection by Henry IV. the right was clearly established 1406, but subsequently fell into disuse, and did not re-appear as an established principle until the reign of Charles II., when an Act was passed 1667 appointing official auditors of the expenditure.

Method of enforcing Privilege.

The Privileges of Parliament can be enforced by fine and imprisonment; and, in the case of members, by expulsion. Imprisonment by the House of Lords, which is a Court of Record, (p. 52, note 1), may be for a fixed period; imprisonment by the Commons ends with the Session.

Members.

Chief Instances of Members being punished by the House; first noticeable under the Tudors.

John Storie,
1548

John Storie (Jan., 1548) committed, probably for violent language, released on submission.

Mr. Copley,
1550.

Mr. Copley (1558) committed for speaking disrespectfully of Mary.

Thomas Long,
1571

Thomas Long (1571), member for Westbury, expelled for bribery to secure his return (p. 139).

Arthur Hall,
1572, 1581.

Arthur Hall (1572), member for Grantham and the master of Smalley (p. 102), reprimanded at the bar of the House for "lewd speeches;" (1581) expelled

and sent to the Tower for publishing a book "derogatory to the authority of Parliament."

Peter Wentworth (1576 and 1584), committed for using strong language against Elizabeth. Peter Wentworth, 1576, 1584.

Dr. Parry (1585) expelled for stigmatizing the bill against the Jesuits as "bloody." Dr. Parry, 1585.

Peter Wentworth and Mr. Cope (Feb., 1588) committed for certain questions put to the Speaker with regard to the liberties of Parliament. Mr. Cope, 1588.

Sir Christopher Pigott (1607) expelled for violent speeches against Scotland. Sir. C. Pigott, 1607.

Mr. Shepherd (1621) expelled for ridiculing Puritanism. Mr. Shepherd, 1621.

Mr. Palmer (1639) committed for protesting against the Great Remonstrance. Mr. Palmer, 1639.

The Long Parliament (1640—1660) abused the privilege of commitment by imprisoning petitioners in favour of the Constitution.

Lord Shaftesbury (1677) sent to the Tower by the Lords, together with the Duke of Buckingham and Lords Salisbury and Wharton, who were released in four months. Shaftesbury was imprisoned for a year and had to ask pardon on his knees.¹ Lord Shaftesbury, 1677.

Sir Robert Walpole and Mr. Cardonel (1711) expelled for speculation. Sir Robert Walpole, 1711.

Sir Richard Steele (1714) expelled for abusing the Ministry in the "Crisis." Sir Richard Steele, 1714.

John Wilkes (1764) expelled for seditious libel (ch. vii.), re-elected 1768, again expelled and declared incapable of re-election; on his being elected a third time the Commons gave his seat to the second on the poll, Col. Luttrell, who had only 296 votes to 1143 polled by Wilkes. This was unconstitutional, John Wilkes, 1764.

¹ The custom of making prisoners kneel at the bar to receive judgment was given up 1772.

and the records of the proceeding were subsequently expunged from the journals, 1782, on the motion of Wilkes himself, who had been returned in the new Parliament.

Non-Members. 2. Instances of persons not members being punished for contempt.

Bland, 1586. *Bland*, a currier, was in 1586 fined 20/. for speaking contemptuously of the House.

Sandford, 1642. *Sandford*, a tailor, was imprisoned by the Lords March, 1642, for cursing Parliament.

Grand Jury of Kent, 1701. On the supplies being delayed by Parliament in 1701, the Grand Jury of Kent petitioned that the loyal addresses of the Commons should be turned into Bills of Supply. The petition was voted scandalous, insolent, and seditious, and Mr. Colepepper and four others were imprisoned.

Aylesbury men, 1704. In 1704 the Commons committed the five Aylesbury men to prison for bringing actions against the returning officer (p. 110).

Alexander Murray, 1751. *Alexander Murray*, 1751, committed to Newgate for insulting a returning officer; sued out his writ of *Habeas Corpus* (ch. vii.), but the judges declared they had no jurisdiction, and that the authority of the House was sufficient.

Burdett's Case, 1810. In 1810 the House committed to Newgate the publisher of a certain placard; *Sir Francis Burdett* in Parliament denied their power to do so and was sent to the Tower for contempt; he brought an action against the Speaker which he lost, the Lords confirming the decision (Appendix B.)

The above were all legal commitments, as the power of the House to punish for contempt and breach of privilege was early recognised. Occasionally, however, the House has acted illegally, e.g., in *Floyd's case*, 1621, where the Commons ordered one Floyd, a barrister, to pay

£1000 and to be put in the pillory for speaking Floyd, 1621. against the Elector Palatine; this they had no right to do, the offence not being a breach of privilege.

And in 1721 the printer of *Mist's Journal*, a Mist's Journal, 1721. Jacobite paper, was committed to Newgate, though no breach of privilege had taken place.

Although the Commons have occasionally vainly attempted to create new privileges, they must show that the privilege claimed has always been customary, *e.g.*, in *Ashby v. White*, 1702 (Appendix B.), Ashby v. White, 1702. the Commons claimed the power of determining the rights of electors, as well as the legality of elections; coming into collision on the subject with the Lords, the matter was ended, though not settled, by a prorogation.

In 1837—40, *Stockdale v. Hansard* (Appendix B.), Stockdale v. Hansard, 1837—40. the Courts held that the Commons could not authorise the publication of libellous matter

Instances of collisions between the Lords and Commons. Collisions between the two Houses.

1407. The Commons asserted that the King's request to them to send a deputation to the Lords to hear and report on the reasons for granting subsidies was "to the prejudice of their liberties," and established the rule that neither House should make any report of any grant to the King until passed by Lords and Commons.

In 1621 the Lords protested against the illegal punishment of *Edward Floyd* by the Commons. The latter agreed that Floyd should be tried by the Lords, but declared that the case should "not be a precedent towards injuring the privileges of either House."

In 1640 the Lords voted, in accordance with the King's wish, that supplies should be granted before

grievances were discussed ; this was voted a breach of privilege by the Commons.

*Skinner v. The
East India
Company, 1667.*

In 1667 in the case of *Skinner v. The East India Company*, the Lords claimed an original jurisdiction as a court of justice, which the Commons denied. The quarrel lasted for fifteen months, being finally settled by the mediation of the King, at whose instance all proceedings were expunged from the journals.

In 1671, on the Lords trying to reduce a tax, the Commons declared that such Bills could not be amended.

Shirley v. Fagg,
1675.

In 1675, in the case of *Shirley v. Fagg* (Appendix B.), the Commons declared that there was no appeal to the Lords from Courts of Equity. The dispute was ended by a prorogation, but the Lords continued to hear appeals.

1701.

In 1701 the dilatoriness of the Commons in voting supplies caused the Lords to resolve that any ill consequences which might ensue would be due to the action of the Lower House.

1701.

In the same year the Commons quarrelled with the Lords about the impeachment of Somers (p. 152), and resolved that the Lords had attempted "to overturn the right of impeachment lodged in the House of Commons by the ancient constitution of the kingdom."

Aylesbury men,
1704.

In 1704 the two Houses came into collision on the case of the Aylesbury men, committed by the Commons for breach of privilege in bringing actions against the returning officers of their borough. The Commons refused a writ of error to the Lords, and the Lords complained to the Queen. The matter was ended by a prorogation.

In 1860 the Lords rejected a Bill for the repeal of the Paper Duty. Lord Palmerston moved in

the Commons that the power of the Lords to reject taxation Bills is "regarded with peculiar jealousy as affecting the right of the Commons to grant supplies, and to provide ways and means for the service of the year" (*see* Money Bills, p. 111.)

Dispute on the
Paper Duty Bill,
1860.

HOUSE OF LORDS.

House of Lords
Origin.

Origin. The House of Lords was in its origin the Great Council without the lesser barons; the difference between the two classes was foreshadowed in the fourteenth clause of Magna Carta,¹ which provides that greater barons should be summoned by special writ. Peerage does not depend on nobility of blood, which is unknown to English law, *e.g.*, the eldest son of a Peer is only a commoner,² although he bears a courtesy title. Neither does it depend on tenure, although baronies by tenure have occasionally been claimed, (p. 120), but on the *royal summons*. Although thirteen and a third knight's fees created an *obligation of barony*, the holder was not a baron from the mere fact of possession; *tenure was, however, the original qualification for summons*, but, *temp.* Henry III., the King exercised the power of summoning to his Council those whom he chose, whether qualified by tenure or not, *i.e.*, the judges; this discretionary power is to be attributed to the alienation of land which "increased the number of those who held of the King in capite," who as "they increased in number decreased in wealth and power." In this reign the necessity of a summons is clearly established, and, says Sir Harris Nicolas, "the Great Council of the realm came to be divided between those whose great possessions and known fidelity

¹ Sel. Charters, 299.

² *e.g.*, Lord Surrey, son of the Duke of Norfolk, was tried by a common jury, *temp.* Henry VIII.

³ Nicolas' Historic Peerage.

to the Crown procured them a writ, and those who, not holding *per baroniam*, were yet summoned at the King's pleasure, and by a writ similar to that addressed to the tenants *per baroniam*."

Its Hereditary
Character.

The hereditary character of the House of Lords sprang from the hereditary nature of the baronies, and although, at first, the fact that a man had been summoned once was no reason why he should be summoned again, or why his sons should receive a writ, by the reign of Richard II. the general principle became established that a writ of summons *and* a sitting under the writ create an hereditary peerage; the King has no power in such a case to refuse to send a summons;

Lord Bristol's
Case 1626.

e.g., in 1626 on the refusal of Charles I. to send a writ to Lord Bristol, the Peers declined to sit without him, and the King had to give way.

Creation of
Peers.

Creation of Peers.

Tenure by
Barony.

Although *tenure by barony* had been the original qualification for summons, we have seen that from 1295 at the latest it was no longer sufficient in itself to create a Peer. Various attempts have, however, been made in later times to claim barony by tenure;

Fitzalan's Case,
1433.

e.g., 1433, Sir John Fitzalan claimed the earldom of Arundel as "united and annexed to the castle and lordship of Arundel." The claim was admitted "saving the rights of the King, of the Duke of Norfolk, the heir general of the Earls of Arundel, and of every other person."

Neville's Case,
1598.

1598. Sir Edward Neville claimed the barony of Bergavenny, "not as has been generally supposed

¹ Nicolas' Historic Peerage. Sir H. Nicolas remarks on this case that in the reign of Henry VI. more anomalies are to be found with respect to the Peerage than in any which preceded it.

on the sole ground that the dignity was attached to the barony of Bergavenny, but that he, as being seised of that castle, and as heir male of the last lord, was the more eligible person.¹"

In 1660 the barony of Fitz-Walter was claimed as a barony of tenure by Mr. Cheeke; in 1669 the claim, which was opposed by Mr. Mildmay, the heir general of Robert Fitz-Walter summoned by writ 1295, was heard by the Privy Council, and it was decided that barony by tenure was obsolete, and "for weighty reasons not to be insisted on," and a summons was sent to Mr. Mildmay. "*At no period since the reign of Henry III.,*" says Sir Harris Nicolas, "*has tenure per baroniam been deemed to constitute a right to a writ of summons.*"

The Fitz-Walter Case.

Baronies by Writ, originating *temp.* Henry III. (or possibly *temp.* John), soon superseded the qualification of tenure, *e.g.*, in 1275, out of fifty-three barons summoned, eleven did not hold lands *per baroniam*; in 1299, out of forty-five persons summoned for the first time, only twenty-four were barons by tenure, and, says Sir Harris Nicolas, "it is certain that the number of barons by tenure during the reign of Edward I. greatly exceeded the number of persons summoned to Parliament."

Baronies by Writ.

In 1387 occurred the first instance of a barony being created by *Letters Patent*, when Sir John Beauchamp of Holt was made Lord Beauchamp of Kyderminster; the next occurred 1433 when Sir John Cornwall was created Lord Fanhope; from this time Letters Patent became the usual form of creation. Letters Patent must contain a limitation to heirs male or female; a Peer created by Letters Patent need not take his seat to be ennobled. The method of creation at the present day is by Letters Patent, followed by a writ of summons.

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Letters Patent.

¹ Nicolas.

Although during the minority of Richard II. Peers were created by Parliament, the sole right of creation has remained vested in the King, and has occasionally been dangerously employed, *e.g.*, Anne, Jan., 1711, created twelve Peers at once to obtain a majority in the Upper House for the Tories.

The Peerage
Bill, 1719.

In 1719—20 the Peerage Bill was introduced by the Dukes of Somerset and Buckingham, with the approbation of the King; by it the Crown was not to increase the existing number of 178 by more than six, although it might create a new peerage for every one which became extinct. The Bill, which was violently opposed by Walpole, was fortunately thrown out by the Commons; had it passed it would have taken away any check on the obstinacy of the Lords, who can, when necessary, be overwhelmed by a fresh creation, *e.g.*, in 1832 sixteen Peers were created to aid the passage of the Reform Bill, and this number would have been increased until a majority had been obtained, if the Lords had not yielded. A peerage cannot be resigned by its holder; it can only be taken away by Parliament.

Composition of
the Lords.

Composition of the House.

(1) *Dukes.* First created 1337 (the Black Prince made Duke of Cornwall.)

Marquises. Count of the Marches. First introduced 1385, when Robert de Vere, Earl of Oxford, was made Marquis of Dublin.

Earls. Title introduced by the Normans 1066; the Anglo-Saxon Ealdormen and Danish Jarls were prototypes (*see* Stubbs' *Sel. Charters*, 485, *Summons of an Earl*).
"

Viscounts. First introduced 1440. John, Lord Beaumont, created Viscount Beaumont.

Barons. The word *baron* signified chronologically—

1. A tenant-in-chief.
2. The holder of a barony of $13\frac{1}{2}$ knights' fees.
3. A man who held such a barony *and* received a writ.
4. A man who received the summons *whether the holder of a barony or not*.
5. A man entitled to receive the writ either by creation or prescription.¹

(2) *Spiritual Peers*, who formerly far outnumbered the Lay Peers; the abbots and priors were summoned by virtue of their tenure *per baroniam*, the bishops by virtue of their ecclesiastical position. From 1341 the number somewhat diminishes, owing to the burden of attending. After the dissolution of the monasteries, 1539, the archbishops and bishops numbered only twenty-one; this number was subsequently increased to twenty-six. At the present day the junior bishop, unless he happens to hold the see of Durham, London, or Winchester, is not summoned. New sees, such as Liverpool, carry no seat with them. In 1801 four Irish bishops were added to Parliament, and sat until the disestablishment of the Irish Church, 1869. In January, 1642, the Puritans carried a motion to exclude bishops from Parliament, and they were not restored until 1660; motions made 1834 and 1836 to deprive them of their seats were lost. Spiritual peers cannot vote on questions of life and death, and have no right to be tried by the Peers.

(3) *Life Peers* occasionally created *temp.* Richard II. to Henry VI., *e.g.*, Thomas Beaufort, Duke of Exeter, 1416; Guichard d'Angle, Earl of Huntingdon, 1377. There have been occasional creations since, *e.g.*, the baronies of Hay 1606, and Reede 1644, *but these did not carry with them a seat in*

¹ Sel. Charters, 37.

Lord Wensley-
dale's Case, 1856.

the House. There was no doubt that the crown had the power of giving life peerages, and in 1856 Sir James Parke was created Baron Wensleydale for life by Letters Patent. The opposition to this was great; it was argued that the crown's power had not been exercised for four hundred years, and was therefore obsolete, and that in any case it could not give a right to sit in Parliament; it was answered that "*nullum tempus occurrit regi*," and that lapse of time is of no effect. The question was referred to the Committee of Privileges, and in the result it was declared that "neither Letters Patent, nor Letters Patent with the usual writ of summons in pursuance thereof, can entitle the grantee to sit and vote in Parliament." In consequence Lord Wensleydale was made an hereditary peer.

In 1876, by the Appellate Jurisdiction Act, two law Lords were added as Life Peers to the Upper House, to strengthen its judicial side as a Court of Appeal. The great advantage of life peerages is that they might often be conferred on able men who are not rich enough to support an hereditary peerage.

Representative
Peers.

Scotch.

(4) *Representative Peers.*

(a) *Scotch.* Added at the Union 1707; they are sixteen in number, and are elected for each Parliament by the Peers of Scotland. By accepting an English peerage they forfeit their seats as representative Peers. As no more Scotch Peers can be created, the existing Scotch peerages will all in time become extinct, or be merged in the peerage of Great Britain. Scotch Peers have all the rights of peerage except a seat in Parliament.

Irish.

(b) *Irish.* Added at the Union 1801; they are twenty-eight in number and are elected for life.

One Irish peerage may be created for every three which become extinct, or are transferred to the peerage of Great Britain, until the number is reduced to one hundred, when a peerage can be created for every one that dies out. Irish Peers may sit in the Commons, but by so doing forfeit their rights as Peers; they cannot represent any Irish constituency.

Numbers. The numbers of the Upper House Numbers have varied much at different times, *e.g.*, in Dec., 1299 ninety-nine barons were summoned besides earls and spiritual peers. Under the Lancastrian Kings the ranks of the peerage were much thinned by the wars of the Roses, in 1454 only fifty-three temporal peers were summoned, and in 1485, (the first Parliament of Henry VII.), only twenty-nine. Under Henry VIII. we find as many as fifty-one temporal peers; in this reign the number of spiritual peers was reduced to twenty-six, at which number it has ever since remained (except during the period when the four Irish bishops were added 1801—1869.) Many creations were made by the Stewarts, by whom peerages were frequently sold. In Feb., 1649, the Commons voted that the House of Lords was “useless and dangerous, and ought to be abolished,” and it did not meet again until the Restoration. In 1657, Cromwell, being authorised to create a new House, sent writs to sixty persons who met in the following year (Jan. 10); the Commons, however, refused to recognise them, and the House was dissolved Feb., 1658. In 1688 there were one hundred and fifty-eight Peers, and *temp.* Anne one hundred and sixty-eight. The lavish creation of Peers by George III., drawn chiefly from the wealthy middle classes, introduced a new element into the Upper House, which became “the strong-

hold not of blood but of property ;" peerages were frequently given (especially at the instigation of Lord North and Pitt) as rewards, and to strengthen the Court party ; the number of peerages, including promotions, conferred during the reign was three hundred and eighty-eight. The House of Lords at the present day contains six princes of the blood, two archbishops, twenty-four bishops, twenty-one dukes, nineteen marquises, one hundred and eighteen earls, twenty-six viscounts, two hundred and fifty-three barons, sixteen Scotch representative peers, and twenty-eight Irish representative peers, total five hundred and thirteen.

Functions of the
Lords

Functions of the Lords.

The House of Lords is a Court of Record (p. 52, note 1), which the Lower House is not, and as such has the power of inflicting fines and imprisonment. Its functions are :—

Legislative.

Legislative. In theory it has a co-ordinate power with the King, and the House of Commons ; practically, however, it does not initiate important measures, but confines itself to amending and revising Bills sent up from the Commons ; it is thus a most useful check on hasty legislation, whilst on a matter on which the nation has really made up its mind the Lords are compelled to yield, *e.g.*, the Reform Bill 1832. It has the sole power of initiating Bills relating to the peerage, but cannot initiate or amend a money Bill.

Deliberative.

Deliberative and Consultative. The Peers are the hereditary counsellors of the King, and as such have the individual right of access to the sovereign (*see* Seven Bishops' Case, Appendix B.) When Parliament is not sitting they are the permanent counsellors of the crown, and may give advice.

Judicial.

Judicial. Derived from the judicial functions of

the King's Council (p. 39). The House of Lords is the Supreme Court of Appeal from the Courts of Common Law, and also from the Equity Courts. In cases of impeachment (pp. 145, sq.), the Commons act as the accusers, the Lords as the judges. The Lords have no jurisdiction as a Court of first instance, except in trying a member of their House for treason or felony [*Skinner v. East India Co.* (p. 118), *Floyd's Case* (p. 117)]. The Speaker of the House of Lords is the Lord Chancellor, who has, however, no authority and no casting vote; he is not excluded from the debate.

Alleged disadvantages of the Upper House.

It is sometimes said that an hereditary house naturally tends to become ignorant and indifferent, that it perpetuates class interests, that as a check on hasty legislation it is not necessary, and that by its existence the responsibility of the Commons is weakened.

Alleged disadvantages of the House of Lords.

HOUSE OF COMMONS.

Origin. The House of Commons may be said to have been founded by Simon de Montfort when he summoned the representatives of the towns Dec., 1264, to meet at London in the following January; and to have been in its origin closely connected with the local machinery of the County Courts (p. 64).

House of Commons.
Origin.

Representation. The earliest representation in England was ecclesiastical, and is to be traced in the Church Councils. As used for fiscal and judicial purposes it was familiar to the nation long before it was used politically, *e.g.*, in the *shire moot* (p. 63), the hundreds were represented by the twelve lawful men, the boroughs by the reeve and four men.

Representation.

In the *hundred moot* (p. 66), the townships were represented by the reeve, the priest, and four men,

whilst the laws of Ethelred¹ appoint a representative committee of the twelve senior thegns to present criminals.

Early instances
of Representa-
tion, 1070.

In 1070 the ancient laws and customs were drawn up from the declaration of twelve knights elected for each county in the Shire Court.

1085.

In 1085 the information for the compilation of Domesday (ch. v.), was obtained from the oaths of twelve lawful men representing each hundred, and of the reeve, priest, and four lawful men representing each township.²

1164, 1166, 1176,
1194.

In 1164, 1166, 1176, and 1194 regulations are passed concerning representative juries.

1181.

In 1181 certain lawful men are, by the Assize of Arms, to swear to all who possess sixteen marks, or ten marks in chattels and rent.³

1188.

In 1188, in the Saladin tithe, four or six lawful men of the parish are to declare on oath the proper amount which ought to be paid by those who appear to have given less than their due.⁴

1198.

In 1198 a carucage of 5/., is collected by officials in conjunction with sworn representatives of the county as assessors.

Magna Carta.

By Magna Carta (c. 18), it is provided that the Assizes shall be held for each county four times a year, before two justices and four knights chosen in the County Court.⁵

By clause 48 of the Charter evil customs are to be enquired into by twelve sworn knights of each county chosen in the County Court.

1231.

In 1231 twelve burgesses were to represent each borough in the County Court of Yorkshire before the itinerant justices.⁶

Sel. Charters, 72.

² Ib. 86.

³ Ib. 155.

⁴ Ib. 160.

⁵ Ib. 299.

⁶ Ib. 358.

*Political Representation.*Political
Representation

By degrees the local representatives were no longer consulted locally, but were summoned to a central point ;

e.g., Aug. 4, 1213, the reeve and four men from each township in the King's demesne were summoned to the Council at St. Alban's, to consult about the restitution to be made to the bishops ; this was more than a financial question. Instances.
St. Alban's, 1213.

In Nov., 1213, four discreet knights are summoned from each county by writs directed to the sheriffs to consult with the King about State affairs¹ ; they were probably elected in the County Court. Oxford, 1213.

From 1213 to 1254, although representation continues to be employed for purposes of assessment and the like, there is a break in the continuity of Parliamentary representation, owing to the minority of Henry III. and his personal government.

In 1254, however, two lawful and discreet knights of the shire were ordered to be elected in the County Courts, and to be sent to Westminster to confer about a grant.² 1254.

In 1261 three knights from each shire were summoned by the barons to St. Alban's, "to treat of the common business of the kingdom," the King thereupon ordered them to repair to Windsor.³ 1261.

In 1264 four knights from each shire were summoned to Parliament by Simon de Montfort. 1264.

In Dec., 1264, Simon de Montfort issued writs for a Parliament to meet in Jan., 1265, at London ; to it were summoned two knights from every shire, two citizens from each city, and two burgesses from each borough. This is the first instance of Parliament et
1265.

¹ Sel. Charters, 276, 287.² Ib. 376.³ Ib. 405.

Assize were empowered to enquire into returns (repealed 1774).

First Disfranchising Statute, 1430.

In 1413 it was provided that the voter must be resident, and in 1432 that the land on which the vote is claimed must be situated in the county. In 1427 the election of knights of the shire was still further regulated, and in 1430 (8 Henry VI.), was passed the first disfranchising statute, providing that county electors must be resident freeholders worth at least 40/. a year; the amount could be determined by the Sheriff on oath. This statute was confirmed 1445, and a complaint was made of the conduct of the Sheriffs. With the exception of a statute of 1655 enfranchising persons worth £200, the county franchise remained unaltered from this time up to the Reform Act of 1832, which added to the 40/. freeholders and occupiers, £10 freeholders if not occupiers, £10 copyholders, £10 leaseholders for sixty years, and £50 tenants at will.

By the Reform Act of 1867 the county franchise was given to occupiers of £12 value, £5 freeholders without occupation, £5 copyholders, and £5 leaseholders for 60 years. To enjoy the franchise it is necessary to be placed on the register, for which certain qualifications of residence and tax paying are necessary.

Borough Franchise.

Borough Franchise.

At first the boroughs were as a rule indifferent to the honour of returning members, whilst the writs were sent to the Sheriff in the County Court, not as now to the Returning Officer; the members were nominated in the borough assembly, and the return was sent to the Sheriff in the County Court, where the election was formally made, and the returns sent in with those of the Knights of the Shire.

In London the election was at first made, by the Mayor, Aldermen, and four or six men from each ward; from 1375 to 1485 by the Common Councilmen, and subsequently by the liverymen of the City Companies. In some of the towns which were regarded as counties, *e.g.*, York and Bristol, the franchise was enjoyed by the 40/. freeholders.

In the towns generally the franchise was variously regulated; *e.g.*, it belonged

(1) To all householders paying *scot and lot*, *i.e.*, the local rates; or

(2) To the holders of particular tenements on *burgage tenure* (ch. vi.); or

(3) To Corporations (ch. viii.); or

(4) To all freemen of the borough or guild.

In 1413 (1 Henry V.) residence was required in order to obtain a vote; this provision was however evaded, and the statute was repealed 1774 (14 Geo. III.)

With the granting of new charters by the Tudors, and by Charles II., care was taken so to vest the franchise in close bodies and corporations that Court nominees only were returned. Great abuses arose in consequence, *e.g.*,

The franchise in Bath was exercised only by the Mayor, ten Aldermen, and twenty-four Common Councilmen.

In Buckingham, by the Bailiff and twelve burgesses.

In St. Michael, by all inhabitants paying *scot and lot*; these were seven in number.

In Tavistock, by all freeholders, seven in number.

By the Reform Act of 1832, the borough franchise was given to all owners or occupiers of houses of the annual value of £10, subject to certain conditions of residence, and payment of rates.

By the Reform Act of 1867—8 it was extended to all householders rated to the poor rates, resident one year and on the register; and to all lodgers occupying unfurnished lodgings of the annual value of £10, if they remained in the same lodgings for twelve months.

Composition of
the House.

Composition of the House.

Knights of the
Shire.

Knights of the Shire. First summoned to Parliament 1213, (p. 129), although they had been frequently elected before that for local purposes; for some time they sat and granted aids with the barons, with whom, as representing the landed interest, they were more closely connected than with the burgesses, whilst many of the knights were the younger sons of the nobles. These knights took the place of the general body of tenants-in-chief, whose right of personal attendance disappears after 1295. Though granting aids with the barons, the knights are recorded as voting apart from them 1332, and they sometimes joined the burgesses in petitions; gradually they drew off from the barons and joined the burgesses, with whom they sat 1333, and with whom they were completely fused by 1347. The reasons for their union with the burgesses were—

Their union with
the Burgesses.

1. Their common representative character; both bodies appeared not in their own personal right, but as delegates.
2. Common business in the County Court; of which the citizens were as much members as the landed proprietors.
3. Common form of summons; through the Sheriff.
4. Common powers; both bodies were summoned, not to initiate national measures, but to consent to measures already decided on by the nobles.

5. Community of local and commercial interests.

The fusion of the county and borough element was most important, as bringing great strength and influence to the Lower House.

From 1322 (16 Edward II.) up to the end of Elizabeth's reign, knights of the shire received 4/. a day as wages; these wages were regulated by Acts of 1388, and 1544 (35 Henry VIII.)

In 1372, lawyers were declared ineligible to sit for Counties (repealed 1871), and sheriffs during their term of office.

In 1382, it was ordered that knights refusing to attend Parliament should be fined.

By a Statute of 1413 (1 Henry V.), confirmed 1430, knights must be resident; repealed 1774 (14 George III.)

In 1445 (23 Henry VI.) it was provided that knights must be of gentle birth, and must be able to take up their knighthood, *i.e.*, must hold land to the annual value of £20 (= £300 now).

In 1710, a Statute was passed, to exclude rich merchants from the House, making it necessary for county members to have a property qualification of £600 a year from freehold or copyhold, repealed 1858.

Burgesses. First summoned to the Parliament *Burgesses.* of Jan., 1265.

In 1322 their wages were fixed at 2/. a day, regulated 1544.

In 1413 (1 Hen. V., repealed 1774), it was provided that they must be resident, and free.

In 1710 (9 Anne, repealed 1858), they were to have a property qualification of £300 a year; this Act was amended and confirmed 1760.

Numbers.

Numbers.

In the *Model Parliament* of 1295 seventy-four

Last creation of
a Borough by
Royal Charter,
1677.

knights, and two hundred and thirty-two burgesses sat; the numbers of the latter class fluctuated considerably, as the Sheriffs frequently omitted to send on the writs they had received to the boroughs which did not wish to incur the burden of returning members; or to boroughs from which, for some fraudulent reason, they desired to withhold the writ. Whilst some boroughs obtained dispensations from enfranchisement, others were frequently, especially in later times, created for court nominees by royal charter; the last instance of the creation of a Parliamentary borough by royal charter was that of Newark, 1677. A debate was held on the subject in the House, and it was decided that such a creation was legal. *Temp.* James I., the Commons decided that a borough which had once been represented in Parliament was ever after entitled to a writ. *Temp.* Henry VIII. two hundred and twenty-four burgesses sat. In 1536 Henry enfranchised Wales, (the only previous instances of Welsh representation had been in 1322 and 1326), and in 1544 the County Palatine of Chester sent representatives for the first time. Durham was not represented until 1673. Twenty-two boroughs were added by Edward VI., fourteen by Mary, sixty-two by Elizabeth, who in 1563 created eight at once, the Commons at first making some slight objection; James I. added twenty-seven. Under Charles II. the number of the Lower House was five hundred and thirteen, this was subsequently increased by forty-five Scotch members added 1707, and one hundred Irish added 1801.

Disqualifications
for sitting.

Persons disqualified as Members.

1. *Aliens* unless naturalised (*see* ch. vii.)
2. *Minors*. The disqualification of minority has sometimes been evaded, *e.g.*, Mr. Fox sat for Midhurst when only nineteen, 1768.

3. *Clerks in Orders, e.g.*, Mr. Horne Took^s, when returned for Old Sarum, was declared disqualified 1801.

4. *Judges* (including the Master of the Rolls since 1875).

5. *Holders of pensions*, government contracts, or offices created since 1705.

By the Act of 1708 (6 Anne), if a member accepts an office created before 1705 he has to offer himself for re-election.

6. *Insane persons.*

7. *Bankrupts* (1869).

8. *Persons convicted of treason or felony* or attainted, *e.g.*, Smith O'Brien 1849, O'Donovan Rossa 1870, John Mitchell 1875.

This disqualification is removed by serving the sentence, or by a pardon under the Great Seal.

9. *Peers of England and Scotland*, and Irish representative Peers.

The eldest son of a Peer can sit in the Commons; the first instance is the son of the Earl of Bedford, 1549.

10. *Persons convicted of Bribery.*

There were formerly other disqualifications, such as *non-residence*, repealed 1774; and *lack of property*, repealed 1858. See also *Roman Catholics*, admitted 1828; and *Jews*, admitted 1858 (ch. vii.) Sheriffs could not sit for their own shires; in 1372 Edward III. forbade lawyers to sit in Parliament, and in 1405 they were entirely excluded from the "Unlearned Parliament," whilst up to a very recent date lawyers were not supposed to sit as knights of the shire.

Bribery of members was a method largely employed by the Crown, after the Revolution, to influence Parliament.

Bribery of
Members.

Direct.

(a) *Direct bribery* by means of money was first employed by Lord Danby *temp.* Charles II.; it was continued under William III., Anne, and the Hanoverians, and was reduced to a regular system by Walpole and Sir Henry Pelham. Under George III. the abuse increased, and in 1762 during Lord Bute's ministry £25,000 was spent in one day in buying the votes of members; the practice was continued by Lord North, but ceased after the American war.

Indirect.

(b) *Indirect bribery*, by giving pensions, places, and titles, was much employed by William III. In 1693 the Commons passed a Bill to the effect that no member subsequently elected could accept any office under the crown. This was rejected by the Lords, but passed by them in the following year; William, however, refused the royal assent. In 1701 the *Act of Settlement* provided that "no person who has an office or place of profit under the King, or receives a pension from the crown, shall be capable of serving as a member of the House of Commons." This was repealed 1706 (4 Anne), and by 6 Anne c. vii., 1708, it was enacted that no one holding an office created after October 25, 1705, could sit, whilst members accepting an office which had existed before were to vacate their seats, and offer themselves for re-election. In 1742 the Place Bill, passed after great opposition, disqualified clerks and many other Government officials, and in 1782 the number of places available for members was still further reduced by Lord Rockingham's *Civil List Act* (ch. v.). Subsequently indirect bribery was carried on by State loans and lotteries, shares in which were given away to members, whilst in 1782 Lord Rockingham found it necessary to pass the

Contractors' Act.
1782.

Contractors' Act to disqualify Government contractors.

Bribery at Elections. The first known instance is that of Thomas Long, who, in 1571, bribed the borough of Westbury to return him (p. 114.) Bribery of electors was first systematised *temp.* Charles II., and increased rapidly owing in great measure to the prizes to be obtained in Parliament. The Bill of Rights in 1689 declared that the election of members ought to be free, and Acts were passed to check the abuse 1695 and 1729 (2 George II.), but it increased to an enormous extent under George III. The sale of seats was effected quite openly; if the voters were independent they were bribed individually, if the borough was a "nomination" borough, or in the hands of the Corporation, it was bought out right; there were regular borough brokers, the price of a seat ranging from £2,500 to £9,000. •Bribery at county elections was also notorious, *e.g.*, in 1768 Cumberland cost £40,000, and in 1779 Gloucestershire cost £30,000. The growth of the abuse was due to the "Nabobs," or Indian merchants, (who had amassed large fortunes, and came home with the idea of buying a seat), and to the encouragement of the King. In 1762 bribery was declared punishable by fine, and subsequent Bills were proposed to remedy the evil 1768 (*Alderman Beckford*), 1782 and 1786 (*Lord Mahon*), but were not passed. In 1782 the revenue officers who controlled seventy elections were disfranchised, and in 1809, the sale of seats was checked by an Act (49 George III.) Bribery¹ how-

Bribery of Electors.

Borough of Westbury, 1571.

Bribery Acts, 1695, 1729.

Disfranchisement of the Revenue Officers, 1782.

¹ Subsequent laws against bribery were passed 1842, 1852, 1854, 1858, and the Corrupt Practices Act, 1854, provided that Candidates should pay all election expenses through authorized agents, and that the accounts of election expenses should be published.

ever continued rife until the

Parliamentary
Reform.

Reform Act of 1832 was passed.

Attempts to
introduce Reform
Bills, 1745, 1770.

Reform in the representation of Parliament had been advocated as early as 1745 by *Sir Francis Dashwood*; and in 1770 *Lord Chatham* proposed that a third member should be added to each county, to counterbalance the corruption of the boroughs.

Wilkes, 1776.

In 1776, *Wilkes* proposed to disfranchise the rotten boroughs, to extend the county franchise, and to give members to certain unrepresented towns, such as Manchester and Leeds. No division.

Duke of
Richmond, 1780.

In 1780, the *Duke of Richmond* brought in a motion for annual parliaments, universal suffrage, and equal electoral districts. No division.

Mr. Pitt, 1783.

In 1783, *Mr. Pitt* proposed to disfranchise certain boroughs, and to increase county members. Lost by 293 to 149.

1785.

In 1785, *Mr. Pitt* again proposed to amend the representation by redistributing the seats of the rotten boroughs amongst the counties, and by extending the county franchise to copyholders. Lost by 248 to 174.

Mr. Flood, 1790.

In 1790, *Mr. Flood* moved for the addition of one hundred members, to be elected by resident householders of counties. No division.

Mr. Grey, 1793,
1797.

In 1793 and 1797, *Mr. Grey* moved to increase the number of county members, to extend county franchise, and to have uniform household franchise in boroughs. Lost by 222 to 41, and by 256 to 91.

Sir F. Burdett,
1809, 1817, 1818,
1819.

1809, 1817, 1818, 1819, *Sir Francis Burdett* moved for reform, and proposed electoral districts, annual parliaments, and universal suffrage. All lost by large majorities.

In 1820, *Lord John Russell* moved to disfranchise the corrupt boroughs, and to give the seats to large

towns, and proposed means to check corruption; he brought in other motions on the subject 1821, 1822, 1823, 1827, and 1830, whilst in 1829, Lord Blandford proposed a measure. Lord John Russell, 1820.

In March, 1831, the First Reform Bill, a measure of *Lord Grey's* ministry, was brought forward by Lord John Russell; its provisions were to disfranchise six small boroughs, to take away one member from forty-seven others, and to give the seats to certain counties and towns. This Bill was lost by a sudden dissolution. First Reform Bill, 1831.

In the new Parliament which met June, 1831, the Bill was passed (Sept.) by 245 to 236, but was rejected by the Lords by 199 to 158. Second Reform Bill, Sept., 1831.

In December of the same year a Third Reform Bill was brought in, and passed March, 1832, by 355 to 239; in June it passed the Lords, (who had been intimidated by the threat of a fresh creation of peers), by 106 to 22. Third Reform Bill passed 1832.

By the Reform Act of 1832, fifty-six rotten boroughs were disfranchised, thirty boroughs lost one member, two lost two members; twenty-two large towns had two members given them, twenty had one member; the number of county members was increased from 94 to 159. A £10 franchise was given to the boroughs, and the county franchise was extended to copyholders, and leaseholders. Its Provisions.

Various subsequent motions for reform have been made, *e.g.*, by Mr. Hume 1848, and Mr. Locke King, 1851 and 1858.

In 1867, Lord Derby's Reform Bill was passed. By it thirty-three seats were redistributed, the county franchise was reduced to £12, and a lodger franchise was added. Reform Bill, 1867.

The *Ballot*, which had been discussed as early as the Long Parliament 1646 and 1650, was ad- Ballot.

vocated by Sir Francis Burdett 1818, and Mr. O'Connell, 1830.

In 1833, Mr. Grote's motion for its adoption was rejected by 211 to 106, and his subsequent motions in 1835, '36, '38 and '39 were all lost by large majorities. The Ballot, which was one of the five points of the "Peoples' Charter" 1838—48, (*see Chartists*, ch vii.) was again proposed by Mr. Ward 1842, Mr. Hume 1848, Mr. Berkeley 1849, 1852, 1860. A committee, appointed to enquire into elections (1869), recommended its adoption, and in 1871 a Ballot Bill was passed by the Commons, and thrown out by the Lords. It was, however, passed in the following year.

Party
Government.

Party Government. The origin of the two parties, which have had so great an influence on Parliamentary Government, may be traced in the opposition of the Puritan faction, *temp.* Elizabeth, to the Crown, *e.g.*, in the motions of Mr. Strickland, (p. 104), and in the victory won in 1601 on the question of monopolies (ch. v.) *Temp.* James I. the Puritans, as the party of liberty, drew far away from the upholders of Divine Right, and under Charles I. developed into the fanatic Roundheads or country party, the King's party being known as Cavaliers. At the Restoration, the Cavaliers were entirely in the ascendant, but by the time of the dispute on the Exclusion Bill, 1679, the other party had revived, and the two opposing factions obtained the names of "*Petitioners*," *i.e.*, those who petitioned the King to summon a new Parliament as soon as possible, and "*Abhorrrers*," who were the supporters of the Crown, and expressed their abhorrence of the petitions as calculated to coerce the King. Shortly afterwards these two parties received the names of Whigs and Tories.

Puritans.

Roundheads.

Cavaliers.

Petitioners.

Abhorrrers.

•
Whigs and
Tories.

The term Whigs¹ or Whiggamores had been applied to the Scottish Covenanters in 1648, and was "now transferred to those English politicians who showed a disposition to oppose the Court, and to treat Protestant Nonconformists with indulgence."² The Tories were so called from the name of certain Irish robbers "because," says Sir T. Erskine May, "the supporters of the Duke of York as Catholics were assumed to be Irishmen."³ The broad distinction between the two parties was that the Tories supported the absolutism of the King, the Whigs the rights of the people. "To a Tory the Constitution, inasmuch as it was the Constitution, was an ultimate point, beyond which he never looked, and from which he thought it impossible to swerve; whereas a Whig deemed all forms of government subservient to the public good, and therefore liable to change when they should cease to promote that object."⁴ After the revolution of 1688, the more extreme Tories developed into Jacobites, who continued to disturb the country until after the crushing of the rebellion in 1745. After that the Tory party became the supporters of the King of England. During this period, remarks Sir T. Erskine May, "the Whigs, installed as rulers, had been engaged for more than forty years after the death of Anne, in consolidating the power and influence of the Crown, in connection with parliamentary government. The Tories, in opposition, had been constrained to renounce the untenable doctrines of their party, and to recognise the lawful rights of Parliament and the people."⁵

¹ Another derivation of Whig is a Lowland term for sour whey.

² Macaulay's Hist., i., 200.

³ Const. Hist., ii., 135.

⁴ Hallam, Const. Hist., iii., 200.

⁵ Const. Hist., ii., 137.

Party, Government, however, cannot be said to have been established until the reign of George I., e.g., although William III. between 1693 and 1696 chose his ministers from the Whigs, the ministry from their unity being popularly known as "the Junto," yet, on the loss of their majority at the election of 1698, they refused to resign. By degrees, however, the present ministerial system became established, by which, as the nation, and consequently the Parliament, is divided broadly into two great parties, one of which must have the control of the executive, the ministers are bound to be of the same party as the majority in the House of Commons, and to stand or fall together. The great advantage of party government lies in the "Opposition," which forms a safeguard against any infringement of liberty. To trace the history of party, during the latter half of the 18th and during the present century, would be to write the whole parliamentary history of the period [*see Cabinet and Ministry* (p. 45, sq.)].

Coalition
Ministries.

Coalition Ministries. It has occasionally been thought necessary for the two parties to combine, and to form coalition ministries, either in opposition to the influence of the Crown or Court party, or because neither party by itself is strong enough to form a government, and therefore the two parties agree to sink for a time their minor differences to carry out some important line of policy on which they are at one. In April, 1783, a coalition was formed by the parties of Lord North and Mr. Fox, (who had been bitter enemies), against the policy of George III., whose minister was Lord Shelburne. The King's policy of dividing and weakening the parties had made this coalition necessary. It was headed by the Duke of Portland; the King, how-

ever found himself strong enough to dismiss it in December of the same year; as the coalition¹ had a large majority in the Commons a crisis was imminent, and was only obviated by the genius of Pitt, who in 1784 formed a ministry which was practically a coalition. Coalition of 1783.

In 1806 the Whigs, under Fox, formed a coalition with Lord Sidmouth, Lord Grenville, and the King's party. This ministry was known as the ministry of "all the Talents." "It was," says Sir T. Erskine May, "a coalition between men as widely opposed in political sentiments and connections as Mr. Fox and Lord North had been twenty-three years before, but it escaped the reproaches to which that more celebrated coalition had fallen a victim."¹ Coalition of 1806.

In 1852 a coalition ministry of the Whigs and the followers of Sir Robert Peel was formed under Lord Aberdeen; it fell in January, 1855, owing in great measure to the charge, brought against it by Lord Derby, of mismanagement of the Crimean war. Coalition of 1852.

Impeachment is the prosecution of an offender by the Commons in Parliament before the Lords, who act as judges, the judicial power of Parliament having been declared to lie with the Upper House alone 1399 (p. 127). The Commons deliver the accusation at the bar of the Lords, adducing evidence in support of their case, which is conducted by managers; the Lords pronounce the accused "guilty" or "not guilty," but cannot give judgment, unless the Commons demand it. By omitting to demand judgment the Lower House can exercise an indirect power of pardon. A Peer may be impeached for any offence, but until 1689 Impeachment.

¹ Stubbs, Const. Hist., ii., 178.

Lords Latimer
and Neville,
1376.

it was uncertain whether a Commoner could be impeached for a capital offence (*see Fitzharris' case* p. 151). The first instance of impeachment was that of Lords *Latimer* and *Neville*, (the Chamberlain and Steward), and certain Commoners, (chief of whom was one *Richard Lyons* a trusted agent of the King), by the Good Parliament 1376. The accusation was that of having bought up the King's debts, and of having used various means of extortion; they were all convicted, and sentenced to imprisonment, fine, and banishment. This action on the part of the Commons established their right of impeaching the King's ministers for conduct prejudicial to the welfare of the State.

Earl of Suffolk,
1386.

The next instance was *Michael de la Pole*, *Earl of Suffolk*, the Chancellor, 1386, who was charged with misappropriation of revenue to his own use, with having lost the town of Ghent by his negligence, and with various acts of maladministration; he was condemned to imprisonment and forfeiture. His impeachment was due to political causes; "it is quite clear," remarks Professor Stubbs, "that in his administrative capacity he was equitably entitled to acquittal, and that it was not for the reasons alleged that his condemnation was demanded." This impeachment clearly established the fact that ministers are responsible to the nation, as well as the King.

Other important instances are—

Sir Simon
Burley, &c.,
1388.

1388, the judges, who, in answer to Richard, declared the Commission of Reform illegal 1387, were impeached and exiled. At the same time Sir Simon Burley, Sir James Berners, Sir John Salisbury, and Sir John Holt, were impeached for treason, and executed.

¹ Stubbs, *Const. Hist.*, ii., 475.

In February, 1450, *William de la Pole, Duke of Suffolk*, being impeached, threw himself on the King's mercy, and was exiled for five years. Duke of Suffolk, 1450.

From this time until the reign of James I. no regular instance of impeachment occurs, (although the proceedings against *Wolsey* in 1529 are somewhat analogous), owing to the subserviency of Parliament under the Tudors, and to the preference shown for *Bills of Attainder* (p. 153).

In 1621, however, *Sir Giles Mompesson* and *Sir Francis Mitchell* were impeached for exactions and frauds connected with certain monopolies held by them, and were condemned to fine and imprisonment. Mompesson, and Mitchell, 1621.

In the same year several other impeachments took place, the most important being that of *Lord Chancellor Bacon*, which re-asserted the right of the Commons to hold ministers responsible for their acts. He was charged with receiving bribes, found guilty, and sentenced to imprisonment, and to pay a fine of £40,000. Bacon, 1621.

In 1624 another minister, *Lionel Cranfeild, Earl of Middlesex*, Lord Treasurer, was impeached for bribery, and convicted. His impeachment is noticeable as having been brought about by Prince Charles and the Duke of Buckingham from motives of private enmity; it also finally confirmed the constitutional right of the Commons to impeach ministers of the crown. From this time forth, owing to the bitter complaint of Middlesex, counsel were allowed to aid the accused. Middlesex, 1624.

In 1626 *George Villiers, Duke of Buckingham*, was impeached by Sir John Eliot and Sir Dudley Digges as spokesmen for the Commons, on charges of having bought office, and of having sent aid to the Huguenots. Buckingham was saved by the King dissolving Parliament. Buckingham, 1626.

Dr. Mainwaring, 1628. In 1628 *Dr. Mainwaring* was impeached for preaching in favour of the King's absolutism and power to levy illegal taxes. He was condemned to a heavy fine and imprisonment. He was subsequently rewarded by the King, who gave him the see of St. David's.

Strafford, 1640. In 1640 *Thomas Wentworth, Earl of Strafford*, was impeached of high treason, chiefly on account of his conduct in Ireland. The charges against him at the most amounted to constructive treason, although, remarks Mr. Hallam, the article "charging him with raising money by his own authority, and quartering troops on the people of Ireland in order to compel their obedience to his unlawful requisitions, does in fact approach very nearly, if we may not say more, to a substantive treason within the Statute of Edward III., as a levying war against the King." The Commons, fearing that the charge would not be established, abandoned the impeachment, and proceeded by Bill of Attainder which was only passed in the Lords by 26 to 19.

Laud, 1641. In 1641 *Archbishop Laud* was impeached of high treason, and, after the charges had been in abeyance for three years, was brought to the bar of the Lords. The charges, which were connected with his conduct in the Star Chamber and High Commission Court, and with his alleged desire to introduce Popery into England, were totally insufficient to prove high treason, and the Commons accordingly proceeded by Bill of Attainder, which was passed by twenty of the Lords; the archbishop was beheaded January, 1645.

Clarendon, 1667. In 1667 *Edward Hyde, Earl of Clarendon*, the Chancellor was impeached of high treason; the chief charges against him were that he had

¹ Stubbs, Const. Hist., ii., 107.

‘designed a standing army to be raised and to govern the kingdom thereby, that he had advised the sale of Dunkirk to the French, and that he had grossly violated the liberty of the subject by illegal imprisonments.’ “The Lords refused to commit Clarendon on a general impeachment of high treason,” the Earl, however, escaped to the Continent and died in exile. His impeachment is important as “establishing for ever the right of impeachment, which the discredit into which the Long Parliament had fallen exposed to some hazard.”

In December, 1678, *Thomas Osborne, Earl of Danby*, 1673. *Danby* (afterwards Duke of Leeds), was impeached of high treason, for having written by the King's order a letter to Montague, the English minister at the Court of Versailles; in this letter the King offered for six million livres “to keep a neutrality, to recall his troops from Flanders within two months, and not to assemble his Parliament for six months.” The Lords refused to commit Danby, on the ground that the charge was general, not specific, and a dissolution of Parliament ended the matter for a time. The impeachment was revived in the next Parliament, and Danby, in spite of his plea of the King's pardon, was sent to the Tower, April, 1679. After lying in prison for three years waiting for his case to be decided, he was admitted to bail 1683, and subsequently rose to high honours under William III. Danby's impeachment is of the greatest constitutional importance,¹ the chief points being—

1. The letter, which formed the chief charge against him, was written at the King's command, and bore the endorsement “*this letter is writ by*

¹ Hallam, *Const. Hist.*, ii., 373.

² *Ib.*

³ See Hallam, *Const. Hist.*, ii., 410—420.

Important points
in Danby's Case.

my order, C. R." This was held to be no excuse; and the principle was clearly established that *a minister cannot plead the royal commands in justification of an unconstitutional or illegal act, (see Lord Oxford's case, p. 152, and Ministerial Responsibility, (p. 46).*

2. A question was raised as to whether the dissolution or prorogation of Parliament put an end to an impeachment. In 1673 it had been decided, on the report of the Committee of Privileges of the Lords, that Appeals not decided "in one Session of Parliament continue in *statu quo* until the next Session." In 1679 the Committee of Privileges held that the same rule applied to impeachments; in 1685 this resolution was reversed by the Lords, and the impeachment which had been hanging over Danby for six years was consequently terminated. In 1791 in the case of Warren Hastings (p. 152), it was finally decided *that an impeachment pending in the House of Lords is not terminated by a dissolution.*

3. It was established that *the royal pardon could not be pleaded in bar of an impeachment*; such pardon being held by the Commons to be illegal and void. Had it been valid it would have been subversive of the whole system of Ministerial Responsibility. By the Act of Settlement, 1701, it was provided "that no pardon under the great seal of England be pleadable to an impeachment by the Commons in Parliament." The Sovereign, however, retains the power of pardoning *after conviction.*

4. The practice of impeachments on a *general and not a specific charge of treason*, (as in the cases of Strafford and Clarendon), was checked by the refusal of the Lords to commit Danby at the

beginning of the impeachment, 1678, on a general charge of treason.

5. The Commons objected to the votes of the Bishops in questions of life and death, even in the preliminary stages of the enquiry which might influence the subsequent issue. The Lords, however, decided that the bishops had a right to sit and vote in Parliament *in capital cases* "*until judgment of death shall be pronounced.*" This decision was in accordance with the eleventh article of the Constitutions of Clarendon (Appendix A.), which provided that bishops should vote until it came to the question of "*life or limb.*"¹

In 1681 *Edward Fitzharris* was impeached of Fitzharris, 16 high treason for having promulgated a treasonable libel. An action had been already commenced against him in the Court of King's Bench, and the Lords voted that, as a Commoner, he should be proceeded against at Common law. The Commons resolved that "*it is the undoubted right of the Commons in Parliament assembled to impeach before the Lords in Parliament any Peer, or Commoner, for treason, or any other crime or misdemeanor, and that the refusal of the Lords to proceed in Parliament upon such impeachment is a denial of justice, and a violation of the constitution of Parliament.*" There were several precedents of the impeachment of Commoners, *e.g.*, *Sir Simon Burley* and others, 1388. *Sir Giles Mompesson* and others, 1621. "*A Commoner,*" says Blackstone, "*cannot be impeached before the Lords for any capital offence but only for high misdemeanors.*" *Chief Justice Scroggs* was, however, impeached (1681), of high treason, and in 1689 *Sir Adam Blair* and four other Commoners

¹ Sel. Charters, 139.

were also impeached of high treason, and the Lords resolved to proceed in the impeachment. The case of *Sir Simon de Beresford* 1331 (4 Edw. III.), is not a case in point; he was not impeached but charged with treason *by the crown* before the "earls, barons, and peers;" the lords at first refused to try the case on the ground that he was not a Peer; they subsequently complied, in violation of the thirty-ninth article of Magna Carta, declaring, however, that "the aforesaid judgment now rendered be not drawn to example or consequence in time to come, whereby the said Peers may be charged hereafter to judge other than their Peers, contrary to the laws of the land, if the like case happen, which God forbid." Before the dispute on Fitzharris' case was ended Parliament was dissolved, and the accused was convicted in the Court of King's Bench, his plea that an impeachment was pending against him not being allowed.

Portland and
Somers, 1701.

In 1701, the Whig Lords, *Portland, Oxford, Somers* and *Halifax*, were impeached of high treason by the Tories; the two Houses came into collision about the trial and the Commons refused to appear on the day appointed.

Oxford and
Bolingbroke,
1715.

In 1715, the Tory Lords, *Oxford, and Bolingbroke*, and the *Duke of Ormond*, were impeached for acts prejudicial to the national welfare, *e.g.*, their share in the peace of Utrecht. Oxford in vain pleaded the Queen's commands, and was imprisoned for two years until the Commons stayed proceedings. Bolingbroke and Ormond fled to the Continent and were attainted.

From this time the development of the principle of ministerial responsibility to Parliament has prevented any case of political impeachment, the only instances of impeachment at all being those

of *Mr. Warren Hastings*, 1788, on charges connected with his conduct of affairs in India,* a case which established the fact that prorogation or dissolution does not terminate an impeachment, and that of Lord Melville, 1804, "for alleged malversation of his office."¹

Warren Hastings,
1788.

Melville, 1804.

Bill of Attainder is a Bill passed by Parliament for the attain of any person. It passes through the stages of an ordinary Bill (p. 163), receiving the royal assent when it has passed both Houses. Bills of Attainder were freely used during the wars of the Roses, *e.g.*, a Bill of Attainder was passed 1461 against Henry VI. and his Queen, and under the Tudors, *temp.* Henry VIII., the practice of passing Bills of Attainder without hearing the accused in his defence arose, *e.g.*, *Thomas Cromwell*, 1540, and led to great abuses. Under the Stewarts Bills of Attainder were not employed so frequently, being generally only brought in when the Commons thought the impeachment would fail, *e.g.*, in the cases of Strafford and Laud (p. 148.) The last instance of a Bill of Attainder was the case of Sir John Fenwick, 1696; in his case the Bill of Attainder was resorted to owing to one of the two witnesses, whom the prosecution relied on to prove a charge of high treason, being got out of the way; one witness was not sufficient (p. 5.)

Bill of
Attainder.

Some of the more important dates in Parliamentary history.

Knights of the shire first summoned to the National Council, Aug., 1213 (p. 129.)

Burgesses first summoned Dec., 1264, met Jan., 1265.

Representation complete in the Model Parliament, 1295 (p. 130.)

¹ May, Const. Hist., ii., 93.

Consent of Parliament established as necessary to taxation in the Confirmatio Cartarum, 1297.

The Commons assert their right to assent to legislation, 1322 (pp. 93, 97.)

Division of Parliament into two Houses, 1333 (p. 93.)

First instance of Appropriation of Supplies, 1353, not finally established till 1665 (p. 113.)

First instance of impeachment, 1376 (p. 145.)

Right of auditing public accounts, finally settled 1406 (p. 114.)

Right of Commons to originate Money Bills, first recognised, 1407 (p. 111.)

The Abbots cease to sit in the House of Lords on the dissolution of the monasteries, 1539 (ch. ix.)

Parliament gives the King's proclamations the force of law, 1539 (repealed 1547), (p. 164.)

Right of Commons to control their elections clearly established, 1604 (p. 109.)

The "Great Protest," 1621.

The Petition of Right, Nov., 1628 (Appendix A.)

The Grand Remonstrance, Nov., 1641.

The first Triennial Act, 1641, repealed 1664 (p. 95.)

Abolition of the House of Lords as useless and dangerous, 1649, does not meet again until 1660 (p. 125.)

Cromwell summons a new House of Lords, 1657 (p. 125.)

The Bill of Rights, 1689 (Appendix A.)

The second Triennial Act, 1694 (p. 96)

The Act of Settlement, 1701 (Appendix A.)

Act against pensioners and place-men, 1708 (p. 138.)

The Septennial Act, 1716 (p. 96.)

The Peerage Bill, 1719 (p. 122.)

The "Place Act," against place-men, 1742 (p. 138.)

The Bribery Act, 1762 (p. 139.)

The Grenville Act regulating election Committees, 1770 (p. 109.)

The Reform Act, 1832 (pp. 132, 133, 141.)

The Corrupt Practices Act, 1854 (p. 139 note).

Lord Derby's Reform Act, 1867 (pp. 132, 134, 141.)

Names of Parliaments.

Names of
Parliaments.

The Mad Parliament, met at Oxford, 1258, and passed the Provisions of Oxford; so called by the supporters of Henry III. (p. 16).

"Mad," 1258.

The Model Parliament, 1295, the first complete or model Parliament (p. 130.)

"Model," 1295.

The Good Parliament, 1376, from its attempt under the Black Prince to end abuses and initiate reform; its efforts were ineffectual owing to the death of the Black Prince, and the return of John of Gaunt to power (pp. 47, 146.)

"Good," 1376.

The Wonderful Parliament, 1386.

"Wonderful,"
1386.

The "Merciless" Parliament, 1388, from the proceedings of the Lords Appellant, and its impeachment and execution of Sir Simon Burley, Sir John Holt, and others of the King's friends (p. 146.)

"Merciless,"
1388.

The Unlearned Parliament, 1404, from the fact that lawyers were entirely excluded.

"Unlearned,"
1404.

The Parliament of Bats, 1425, from the "bats," or clubs, carried by the two hostile factions which supported Gloucester and Bedford.

Of "Bats," 1425.

The Reformation Parliament, 1529, from its abolition of the Papal supremacy in England, and reform of the English Church (ch. ix.)

"Reformation,"
1529.

The Addled Parliament, 1614, from its sitting only two months, and passing no Bill at all.

"Addled," 1614.

"Short," 1640. *The Short Parliament*, 1640, April 13th to May 5th.

"Long," 1640—1660. *The Long Parliament*, Nov. 1640—1660 (p. 95.)

"Rump," 1648. *The Rump Parliament*, 1648, the members of the Long Parliament remaining after the Presbyterian party had been driven out by Colonel Pride; about fifty remained.

"Barebones," 1653. *The Little Parliament or Barebones Parliament*
 "Barebones," (also called *the Assembly of Nominees*), 1653, was
Parliament or chosen by Cromwell and his officers from a list of
Assembly of names submitted by the ministers of the various
Nominees, 1653. independent Churches. It consisted of one hundred
 and thirty-nine members, and took its name from
 one of its chief ornaments, Praise God Barebones,
 one of the members for London.

First "Convention," 1660. *The First Convention Parliament*, 1660, from meeting without a summons from the King.

Second "Convention," 1689. *The Second Convention Parliament*, 1689, for the same reason.

Pensionary or "Drunken," 1661—1679. *The Pensionary Parliament*, 1661—Jan. 1679, from most of its members being bribed by either France or Spain; also called *The Drunken Parliament*.

CHAPTER IV.

LEGISLATION.

ANGLO-SAXON laws were enacted *by the King with the Counsel and consent of the Witan*, and were proclaimed in the shire-moot (p. 63); they usually took the form of recording and amending existing customs, previously handed down by oral tradition, and are often difficult to explain, owing to our ignorance of the customs referred to. Some of the more ambitious attempts at legislation, *e.g.*, by Alfred, Ethelred, and Canute, have been dignified by the name of *Codes or Dooms*.

Laws were passed¹ by

Ethelbert of Kent (circ. 600), *Lothaire and Edric of Kent* (circ. 680), chiefly concerned with judicial matters, *e.g.*, fixing of penalties.

Ethelbert,
circ. 600.
Lothaire and
Edric, circ. 680.

Wihfred of Kent (circ. 696), dealing with Church affairs, as well as with justice.

Wihfred, circ.
696.

Ini of Wessex (circ. 690), to prevent the miscarriage of justice; these laws contain the first mention of the King's prerogative of mercy, *e.g.*, a man compounding a felony, if an ealdorman, is "to forfeit his shire *unless the King is willing to be merciful to him*."

Ini, 688—728.

Alfred (circ. 890), who was not an original legislator, but who "gathered the laws together" which previously existed, and embodied them in a Code. They refer mainly to *bots, wites, wers*, and the like (p. 75.) One is an anticipation of the Law of Entail,² and one makes treason deathworthy (p. 2.)

Alfred,
871—901.

¹ Sel. Charters, pp. 61—64.

² "The man who has *bocland* and which his kinsmen left him, then ordain we that he must not give it from his *mag-burgh* (kindred), if there be writing or witness that it was forbidden by those men who at first acquired it."

Edward the Elder, 901—925.

*Edward the Elder*¹ (circ. 920), concerning the "ranks of the people," they declare the amount of land necessary for a ceorl to become thegnworthy, and give privileges of thegnhood to successful scholars and merchants (p. 75, and ch. vii.)

Athelstan, 925—940.

*Athelstan*² (circ. 930), at Greatley, Faversham, Exeter, and Thundersfield, chiefly against theft, and for the establishment of associations of mutual responsibility (p. 69.)

Edgar, 959—975.

*Edgar*³ (959—975), who issues an "Ordinance of the hundred," orders justice to be done to all, and that "one money, one measure, and one weight pass, such as is observed at London and Winchester."

Ethelred II., 979—1016.

*Ethelred II.*⁴ (979—1016), at Woodstock, establishing *borhs* or sureties, foreshadowing trial by jury⁵ (pp. 78 sq.), enforcing the *fyrðwite* (ch. x.), and decreeing "mild punishments" instead of death (p. 73.)

Canute, 1017—1035.

*Canute*⁶ (1017—1035), who confirmed the laws of Edgar, and afterwards issued a code at Winchester. No one was to apply to the King for justice unless he had been first denied it in the lower courts. Every man was to be in a hundred and tithing, and the burdens of *heriots* were to be lightened. *This code also contains an enactment against purveyance*, (ch. v.) *and the earliest forest law* (ch. v.).

Edward the Confessor.

The so-called laws of *Edward the Confessor*, so frequently demanded by the popular voice on occasions of bad government, were not issued until 1070, and are merely a compilation of the laws of Canute, Edgar, and others.

"As a rule," says Professor Stubbs, "the pub-

¹ Sel. Charters, 65. ² Ib. 66, 67. ³ Ib. 70—72. ⁴ Ib. 72, 73.

⁵ "And that a gemot be held in every Wapontake; and the twelve senior thegns go out, and the reeve with them, and swear on the relic that is given them in hand, that they will accuse no innocent man nor conceal any guilty one." Sel. Charters, 72.

⁶ Sel. Charters, 73, 74.

lication of laws is the result of some political change," e.g., Alfred's code marks the consolidation of Wessex, Kent, and Mercia; Edgar's that of the whole of England.

Legislation by the Norman Kings took the form of *Charters* issued by the King and assented to by the barons; these charters usually confirmed customs and liberties, and made grants. William I. separated the spiritual and temporal courts by charter (ch. ix.); Henry I. in his Charter of Liberties, 1100 (*Appendix A.*) makes several legislative enactments, and restores the old laws and customs¹; the charters of Stephen and Henry II. were simply confirmations.

Norman Legislation.

Charters.

William I.

Henry I., 1100.

Stephen.

Henry II.

The Angevin Kings legislated by *Assizes*, (the word Assize at this time signifying *edict* or *statute*), which were issued with the *counsel and consent of the Great Council*, (and more especially of the *Concilium ordinariū*, (pp. 32 sq.) though the consent was usually a mere form; the assizes² were proclaimed in the County Courts by the Sheriffs (p. 64), and were "chiefly composed of new regulations for the enforcement of royal justice"³ (*see Appendix A.*) They were of a temporary rather than a permanent nature. In 1197 the Assize of Measures was issued, with the advice and at the request of the prelates and barons.

Angevin Legislation.
Assizes.

Assize of Measures, 1197.

In the reign of Henry III., in addition to the old forms of legislation, that of *Provisions* was added, e.g., *Provisions of Oxford*, 1258 (p. 16), (re-enacted as the *Statute of Marlborough*, 1267), and of *Westminster*, 1259 (p. 17), (*see Appendix A.*)

Provisions.

The "*leges Henrici primi*" were not compiled until Henry II.

² Instances: Assize of Clarendon, 1166; of Northampton, 1176; of Arms, 1181; of the Forest, 1184.

³ Stubbs, Const. Hist. i., 573.

Edward I.
Statutes.

From the reign of Edward I. legislation was by *Statute, and Ordinance*. The right of the Commons to assent to *taxation* was successfully asserted long before their right to take part in *legislation* was recognised, and even under Edward I. legislation was frequently carried out in assemblies to which the Commons were not summoned, *e.g.*, the Statute *Quia Emptores* was passed in such an assembly 1290; but from the Model Parliament of 1295 the words *ad faciendum* "to enact," always formed part of the summons of the Commons to Parliament; from 1318 till 1327 statutes were enacted "*by the assent of the prelates, earls, barons, and the commonalty of the realm*," and in 1322 Edward II. provided that "all matters concerning the estate of the King, the realm, and the people should be treated of in Parliament by the King, and by the assent of the prelates, earls, barons, and commonalty of the realm according as it hath been heretofore accustomed;" this was on the occasion of the repeal of the *Ordinances* passed 1311, which were an exceptional form of legislation, and did not receive the consent of the King.

Edward III.
Petitions and
Statutes.

From the time of Edward III. statutes were usually founded on petitions of the Commons, the form of an Act being "*at the request of the Commons, and by the assent of the prelates, earls, and barons*;" from this arose the power of the Commons in *initiating legislation*. Petitions to the King, (which might also be presented by the clergy and by private persons), were referred to a Committee of the Lords, and answered by the Sovereign according to their advice; the judges then framed a statute from the petition and its answer; this gave opportunity for much alteration of the original petition, and to remedy the abuse which was the

subject of frequent remonstrance, a Committee was appointed 1341 consisting of barons, prelates, and royal officers, together with twelve knights of the shire, and six burgesses, on whom was to devolve the duty of framing Statutes from petitions.

The King frequently delayed his answer to petitions, or disregarded them, whilst, after they had been turned into Statutes, they were liable to be suspended (p. 165), revoked, (as was done in 1341 by Edward III.) (p. 19), or to become useless from the fact that no provision was made for their execution ; the King also used to obtain petitions from his supporters for the repeal of Statutes which he did not like, and in 1351 the Commons found it necessary to request that no repeal should be made on the petition of a single member. The Commons gradually made their assent necessary to all legislation, even that initiated by the clergy (ch. ix.), or by petitions from private sources.

Legislation at this period also took the form of

Ordinances, which were issued by the King in Ordinances.
Council, at first usually at the petition of the Commons. During Edward I.'s reign, they did not differ much from statutes as the legislative and executive powers were hardly distinguishable ; the chief differences are : an Ordinance is *temporary* (whilst a Statute is supposed to be *permanent*) ; is not enrolled on the statute book ; can be recalled by the King ; and is "*primarily an executive Act,*" a Statute being "*primarily a legislative Act.*"¹ The temporary character of Ordinances is shown by a request of the Commons, 1364, that the Sumptuary laws might be made by Ordinance "that they might amend the same at their pleasure."

¹ Stubbs, Const. Hist., ii., 585.

Orders in
Council.

Initiation of
Legislation.

From the time of Edward III., and especially *temp.* Richard II., Ordinances were used by the King to defeat the operation of obnoxious Statutes; the power of legislating by ordinance is now recognised with limitations, and the Crown can issue orders in Council, whilst certain legislative powers belong to Committees of the Council, such as the Local Government Board (p. 44).

At the accession of Edward III., the Commons had obtained great power in initiating legislation; the King had formerly the right of initiating reform in laws, and the barons and prelates of introducing new measures, as in *Magna Carta* and the *Provisions of Oxford*, but the Commons gradually asserted their right to a share in initiation, which was recognised 1322, and greatly developed by the system of petitions.

The abuse of altering the petitions, before they became Statutes, mentioned above continued, and the Commons attempted to fight against it by drawing up "in the form of complete Bills the statutes which they had previously suggested by petitions, and sending them to the House of Lords that they might be discussed and adopted by that House before they were presented to the King, who then had nothing more to do than to give or refuse his sanction."¹

From Henry VI., complete *Statutes* framed as *Bills*, took the place of petitions, and from the accession of Henry VII., the assent of the Commons to every new law was recognized as necessary,² the form running "by the advice and assent of the Lords spiritual and temporal and

¹ Guizot, Repres. Govt.

² In 1661, it was formally declared that neither House could legislate by itself, nor the two together without the King.

the Commons in Parliament assembled, and by the authority of the same."

Legislation by *Bills* is at present as follows, the Bills. procedure having remained unaltered since the Revolution of 1688. Bills may originate in either House with the exception of *Money Bills* (p. 111), which must come from the Commons, and Bills affecting the Peerage, which must come from the Lords; the Crown has the power of initiating general pardons alone. Public Bills must be introduced Public Bill. by a Member of the House, who first obtains leave; the Bill is then brought in and read a first time; it is subsequently read a second time, and discussed by the House in Committee¹ (for the purpose of freer debate). If passed in Committee it is read a third time, and the question put that it pass; if passed, it is sent to the other House, where it goes through the same process; if amended there, it is returned to the originating House for its assent to the alterations, and if the amendments are not agreed to, a conference takes place between deputations from the two Houses for the purpose of coming to terms; if they cannot agree, the Bill is dropped. If, however, they agree, or the Bill is passed without amendment, it is presented for the *royal assent*, which is given by Royal Assent. the words *le roi le veut*; if the royal assent is refused, the formula is *le roi s'avisera*, and the bill does not become law. Owing, however, in a great measure to the development of the idea of Ministerial responsibility, the royal assent has not been refused since the time of Anne. When a Bill

¹ When the House is in Committee, it is presided over by the Chairman of Ways and Means instead of the Speaker, in the Lords by the Chairman of Committees; a Member may speak as often as he pleases on the same question.

Acts of
Parliament.

has received the royal assent it becomes an Act of Parliament.

Private Bills.

Private Bills, originating in the old petitions from private persons, and in later petitions (*temp.* Henry V.) from the Commons on private matters, refer to private rights, such as those of Corporations, Counties, Railways; they are referred to *Select Committees*, instead of to a Committee of the whole House. They were first separated from Public Bills, 1539.

Select
Committees.

The Crown has attempted at various times, more especially under the Tudors and Stewarts to arrogate to itself all power of legislature.

1. *Indirectly*, by influencing the House of Commons by bribery and intimidation (pp. 22, 24, 138.)

2. *Directly*, by Ordinances, Proclamations, and the abuse of the Suspending and Dispensing power.

Proclamations.

Proclamations. By an Act of 1539, passed at Henry VIII.'s request, it was provided that "Proclamations made by the King, with the advice of his most honourable Council, should have the force of statutes under penalty of fine and imprisonment; so that they were not prejudicial to any person's inheritance, offices, liberty, goods and chattels, or infringed the established laws." This Act was repealed by Edward VI. (1547), but Proclamations were still occasionally used, though illegally; thus in 1549 Proclamations were issued forbidding the melting of current coin, and ordering justices of the peace to "commit to the galleys sowers and tellers abroad of vain and forged tales and lies;" in 1557 Mary, by Proclamation, imposed a tax on foreign cloth and French wines, and declared the penalties of martial law (ch. x.), against everyone found in possession of heretical books. Elizabeth frequently issued Procla-

Instances of
illegal proclama-
tions, 1549.

1557.

mations, and in this manner prohibited the culture of woad, the exportation of corn and money, and the building of houses within three miles of London. In Mary's reign it was decided by the judges that "the King may make a Proclamation to put the people in fear of his displeasure, but not to impose any fine, forfeiture, or imprisonment, for no Proclamation can make a new law but only confirm and ratify an ancient one." It was held by Lord Coke in the *Case of Proclamations* (1610), which had been most arbitrarily issued by James I., and strongly remonstrated against by the Commons.—1. *That no new offence could be created, and no part of the common law changed by Proclamation, though the King could warn men to keep the existing law.* 2. *That no offence not already punishable by the Star Chamber could be made so by Proclamation.* Temp. Elizabeth.
Case of
Proclamations,
1610.

Under Charles I. illegal Proclamations assumed a very oppressive form, and were upheld by the judges; they fixed the rate of provisions, restrained building round London and the like; there are also instances under Charles II., notably one ordering the coffee houses to be closed. In 1685 James II. ordered the payment of Customs by Proclamation before they had been granted by Parliament; in 1766 Lord Chatham's ministry having interfered with the export of wheat by Proclamation, had to get an indemnity from Parliament. Temp. Charles I.
Temp. Charles II.
James II.,
1685.
Lord Chatham,
1766.

The Suspending power was the right claimed by the King to suspend the operation of any Statute; following the example of the Popes in their Bulls, grants and Proclamations were sometimes made notwithstanding (*non obstante*) any law to the contrary. The practice originated with Henry III., and was frequently employed under the Plantagenet kings, e.g., Edward I., 1307, sus- Suspending
Power.

pended the Statute of Carlisle, and the Statute of Provisors was frequently suspended, especially by Richard II. The right was often claimed by the Tudor and Stewart kings, and led to frequent conflicts between the Crown and the people. Charles II.'s Declaration of Indulgence, 1672, suspended no less than forty Statutes. Parliament, however, declared that the King had no power to suspend Acts of Parliament, and the Declaration was withdrawn, though subsequently issued by James II., 1687; the prerogative was taken away by the Bill of Rights, 1689. Closely connected with it was the

Dispensing
Power.

Dispensing power, springing from the prerogative of mercy, and consisting in the dispensation of the observance of certain Statutes by particular persons. Under Edward III. pardons in this way became so frequent that petitions were presented against the abuse 1330, 1347, 1351. In 1444, in a Statute limiting the tenure of office of Sheriff to one year, a special clause was inserted to the effect that the King should not dispense with the penalties for breaking the Act. Under the Tudors and Stewarts the dispensing power was frequently exercised in favour of particular individuals, and was acknowledged by the judges and by Parliament; such a power did undoubtedly exist, and was only called in question when abused. In 1674 Chief Justice Vaughan decided in *Thomas v. Sorell* (Appendix B.), that the King cannot dispense with what is *malum per se*, nor with Statutes made for the general good, nor with the right of a private person or corporation. In 1686 in the collusive action of *Goddén v. Hales* (Appendix B.), Lord Chief Justice Herbert held that "the laws of England were the King's laws," and that he could dispense with any of them,

especially penal laws, whilst his prerogative in matters of government could not be taken away or restrained by Statute. This decision emboldened James to set at nought the fundamental laws of the constitution, and cost him the Crown. In 1688 in the case of the Seven Bishops (*see* Appendix B.), it was contended for the defence that the Declaration of Indulgence was illegal, being founded on a dispensing power which did not exist. By the Bill of Rights it was declared that the power as "assumed and exercised *of late*," was illegal; this has reserved to the Crown its old prerogative of mercy.

Chief legislative Acts to 1295. For details of the various Charters and Statutes *see* Appendix A.

Laws of Ethelbert, 600.	} p. 157.
„ Ini, <i>circ.</i> 690.	
„ Alfred, <i>circ.</i> 890.	
„ Edgar, <i>circ.</i> 967.	
„ Canute, 1017—1035.	} p. 158.

Charter (undated), separating the ecclesiastical and temporal Courts, William I. (ch. ix.)

Charter of Liberties, Henry I., 1100.

„	„	1st	} Stephen, 1136.
„	„	2nd	
„	„	1 of Henry II., 1154.	

Constitutions of Clarendon, 1164

Assize of Clarendon, 1166	} <i>temp.</i> Henry II. a period of legal reform.
Assize of Northampton, 1176	
Assize of Arms, 1181	
Assize of the Forest, 1184	

• Magna Carta, June, 1215 (p. 15.)

Charter re-issued by William Marshall, Earl of Pembroke, 1216, 1217 (p. 15.)

¹ The Charters of Stephen and Henry II. were mainly confirmatory.

Charter of the Forest, 1217.

Statute of Merton, 1236 (20 Hen. III.)

Provisions of Oxford, 1258 (pp. 16, 17.)

„ Westminster, 1259 (pp. 16, 17.)

Statute of Marlborough, 1267 (51 Hen. III.),
(p. 159.)

Statute of Westminster 1, 1275 (3 Edw. I.)

„ Rageman, 1276 (4 Edw. I.)

„ Gloucester (*quo warranto*), 1278 (6
Edw. I.)

Statute of Mortmain (*de religiosis*, ch. ix.), 1279
(7 Edw. I., c. 2.)

Statute of Merchants (*de Mercatoribus*, ch. vii.),
or Acton Burnell, 1283 (11 Edw. I.); another 1285
(13 Edw. I.)

Statute of Wales, 1284.

„ Westminster 2 (*de donis conditiona-*
libus, ch. vi.), 1285, (13 Edw. I.)

Statute of Winchester, 1285.

„ Westminster 3 (*quia emptores*, ch. vi.),
1290 (18 Edw. I., c. 1.)

CHAPTER V.

TAXATION AND FINANCE.

Ordinary Revenue of the Crown.

Ordinary
Revenue of the
Crown.
Crown Lands.

1. *Crown Lands*; the *Folkland* of Anglo-Saxon times (ch. vi.) could not at first be alienated without the consent of the Witan, though about the time of Alfred this restriction seems to have been relaxed; after the Norman Conquest it became *terra regis*, or crown land; it was granted largely to the barons during the anarchy of Stephen's reign, resumed by Henry II., 1155,¹ granted again by John, and resumed by the Earl of Pembroke for Henry III., 1217, and by Hubert de Burgh, 1220. Under Edward II., alienation of crown lands was forbidden owing to the lavish grants to favourites, and a resumption was effected by the *Ordinances*, 1311, (repealed 1322). During the wars of the Roses many lands were forfeited to the crown, but granted out again immediately, and under Henry VI., the revenue from royal demesne was £5000 only. In consequence, *Acts of Resumption* were passed 1450, 1456, 1473. Crown lands increased greatly under Henry VII. and Henry VIII. owing to forfeitures and the dissolution of the monasteries, 1539; the gain was, however, more than counterbalanced by the lavishness of Henry VIII. Much was sold by Charles I. to raise money, and what he left was sold by the Parliament; the Parliamentary sales were, however, declared void at the Restoration. In 1702, it became necessary to restrain the alienation of crown lands by statute, owing to the lavish gifts of Charles II. and William III.; absolute grants

Acts of
Resumption,
1450, 1456, 1473.

¹ Sel. Charters, 128. *Will. Newb.*, ii., c. 2.

were entirely forbidden, but in spite of this, and of the forfeitures during the rebellions of 1715, 1745, the revenue from this source at the accession of George III. was only £6000. George III. surrendered the crown lands to the nation in return for a Civil List, and in 1794, their management was improved by Act of Parliament ; in 1810, they were put under the control of the *Commissioners of Woods and Forests* ; they now produce £390,000 a year. Since the surrender of the crown lands the Sovereign has been able to hold and dispose of private property in the same way as an ordinary person.

Civil List.

The Civil List, first established at the accession of William and Mary, "for the support of the royal household, the personal expenses of the King, and the payment of civil offices and pensions," consisted of £700,000, £300,000 of which was raised by Excise duties (p. 186), the rest being from the hereditary revenues of the crown. Under Anne and George I., debts on the Civil List were incurred, and had to be paid by Parliament. George II. was to have a Civil List of at least £800,000, Parliament engaging to make up any deficiency in the hereditary revenues, in spite of this, however, in 1746, a debt of nearly half a million had to be paid off. George III. surrendered the hereditary revenues for a fixed sum of £800,000, relinquishing all claim to any surplus ; in 1777, a debt was paid by Parliament, and the list increased to £900,000. Frequent debates on the subject culminated in Lord Rockingham's Civil List Act, 1782, which regulated the expenditure, and diminished offices, pensions, and secret service money. The debt however, increased, and the Civil List was again raised 1812 and 1816, reaching in the latter year over a million, whilst various items of

Rockingham's
Civil List Act,
1782.

expenditure were removed. In 1831, William IV. gave up the hereditary revenues of Scotland, the Civil List for Ireland, and other interests, accepting in exchange a Civil List of £510,000, which was still further relieved by the removal of judicial salaries and other expenses. The Civil List of the Queen, which has been relieved from all extraneous charges, is £385,000, of which £1200 may be granted annually in pensions.

2. *The ferm of the Counties, i.e., the amount* Ferm of the Counties. collected and paid by the sheriffs in composition for the profits due to the King from the Shires for judicial proceedings, fines, rent, and the like, (in Anglo-Saxon times paid in kind as rent for leases of folkland, and known as *feormfultum* or “sustentation.”) Feormfultum. The counties were let to the sheriffs at a fixed rate, thus opening the way for great extortion, as whatever could be raised above the amount agreed upon, was kept. The towns also often compounded for tolls, markets, dues, etc.

3. *Income from feudal incidents, e.g., marriage,* Feudal Income wardship, successions, escheats, and the like (ch. vi.) These varied much and were very burdensome. By the charter of Henry I. (1100), reliefs were to be just and lawful; by Magna Carta they were fixed at £100 for an earl or baron, and £5 for a knight. Magna Carta also restrained the abuses of wardship and marriage, and forbade aids to be imposed *nisi per commune concilium regni*, with the exception of the three regular feudal aids, to make the lord's eldest son a knight, to provide a dowry for his eldest daughter on marriage, and to ransom the lord's person. This was confirmed by the *Confirmatio Cartarum*, 1297, and by a Statute of 1340, which declared *all aids whatsoever* illegal unless levied with consent of Parliament. Never-

The Great
Contract, 1610

theless, Edward III. levied an aid to knight the Black Prince, 1346. In 1610, Lord Salisbury attempted to secure the abolition of feudal incidents in return for an annual grant of £200,000; the attempt, which was known as "the Great Contract" failed, and the feudalexactions continued until surrendered by Charles II., 1660. A system of compulsory knighthood was employed to raise money by Edward I. (1278, 1292), Edward VI., Elizabeth, James I., and Charles I.

Sale of Offices.

4. *Sale of Offices and Honours.* A lucrative source of income, *e.g.*, the Chancellor in 1130 paid £3000 for his office; the office of Sheriff was freely sold by Richard I., who sold all offices, even bishoprics.¹ James I. sold peerages and baronetcies.

Pleas of the
Crown.

5. *Proceeds of Pleas of the Crown, i.e.*, fines for offences tried before the Sheriff, (*e.g.*, *murdrum*), for not attending the local courts,² for breach of the forest laws (p. 177), on alienation of land and the like.

Church Revenue.

6. *Revenues from the Church, e.g.*, first fruits and the custody of vacant sees (ch. ix.)

Jews.

7. *Exactions from the Jews* (who were regarded as the King's chattels), especially by John, Henry III., and Edward I. Edward III. borrowed large sums from the Florentine bankers, the Peruzzi, and the Bardi, and repudiated the debt, 1345 (ch. vii.)

Miscellaneous.

8. *Miscellaneous Revenue* from prerogative and droits of the Crown, *e.g.*, waifs and strays, wreck-age, dues from markets, ports, mines, and salt works, treasure trove, royal fish (*i.e.*, sturgeon and whale); in early times also from the sale of justice and protection; in later times from certain revenues vested in the Crown, *e.g.*, droits of the Admiralty (*i.e.*, prizes), West India Duties; the hereditary

Sel. Charters, 251. *Ben. Abb.*, ii. 90.

² *Ib.* 66.

revenues of Scotland ; the revenues of the Duchies of Cornwall and Lancaster. The interest of the Crown in most of these was given up by William IV., though certain droits, and the two Duchies are retained.

9. Emoluments springing from the royal prerogatives of (a) *purveyance*, (b) *coinage*, and (c) *possession of forests*.

(a) *Purveyance* (*pourvoir to provide*) and *Pre-emption*, a prerogative of very early origin, was the right of purchasing provisions and necessaries for the royal household "at a fair price in preference to every competitor, and without the consent of the owner ;" the right also extended to the use of conveyances, and to compulsory labour,¹ e.g., William of Walsingham was empowered by Edward III. to compel an adequate number of painters to work at St. Stephen's Chapel, Westminster, all refusing being liable to imprisonment. Payment was usually less than the value of the goods, and was often made in tallies on the Exchequer, where there were no funds to meet the demand. The system was greatly abused, and frequently petitioned against. There are no less than forty Statutes against Purveyance commencing with a law of Canute² ; Magna Carta forbids the King or his bailiffs to take any man's corn or other goods without payment on the spot, unless the owner voluntarily gives credit ; or to impress any carriages or horses, or to take any man's timber unless with the owner's consent ; the right is declared not to be vested in the Constables of the Royal Castles. Purveyance was regulated by the *Provisions of Oxford* 1258, by the *Dictum de Kenilworth* 1266, by the *Statute of Westminster* I 1266, 1275, by the *Articuli Super Cartas* 1300, by the *See Commissions of Array*, ch. x. ² *Sel. Charters*, 74.

Purveyance and Pre-emption.

Purveyance regulated, 1258.

1266.
1275, 1300.

1311, 1322, 1340, 1347. *Ordinances* of 1311, in 1322, 1340, and 1347, (when goods seized by purveyors were to be paid for on the spot if under 20/. in value, and within three months if over). Edward III. gave up the right 1362, and thenceforth purveyors were to be called buyers, and were to buy only for the personal wants of the King or Queen.¹ Nevertheless the abuse continued; was petitioned against in the Good Parliament, 1376, and restrained 1384, 1422, 1549, 1571, and by the Long Parliament. In 1610 an attempt to abolish purveyance by the "Great Contract" failed (p. 172); the right was surrendered 1660.

The Coinage.

(b) *The Coinage* was from the earliest times a royal monopoly, and a source of royal profit; it was a subject of legislation under Athelstan, ("let our money pass throughout the King's dominions, and that let no man refuse,") Edgar, Ethelred (the King alone to have a Mint²), and Canute. Under Henry I. false coining was very prevalent, and stringent penalties were enacted against coiners in the Charter of Liberties 1100; the coinage was also depreciated by clipping, a process which frequently took place in the royal Mint itself. The right of private coinage was granted to a few nobles and prelates on payment of a tax; under Stephen the barons coined freely³; by the treaty of Wallingford, 1153, a new coinage was agreed upon and issued 1158; being followed by another 1180.⁴ Under John the

¹ "The abuse of purveyance accounts for the national hatred of Edward II., and for the failure of Edward III. to conciliate the affections of the people, and helps us to understand why even Edward I. was not a popular King."—SUGGS, Cons. Hist., ii., 538.

² The Archbishops appear to have always exercised the right of coining.

³ Sel. Charters, 116. *W. Newb.*, i. 22.

⁴ Ib. 133. *Ben. Abb.*, i., 263.

coin was made by German merchants called Easterlings (hence *sterling*); in 1278 Edward I. ^{Easterlings.} renewed the coinage,¹ which was for the future to be round in order to prevent clipping; he also depreciated the money by diminishing its weight. In 1307 it was enacted that the coin should ^{Statutes on the Coinage, 1307.} circulate at its nominal value, but nevertheless it was necessary to demand a reform in the Articles of Grievance 1309. By the Ordinances of 1311 the ^{1311.} King was forbidden to meddle with the currency without the authority of Parliament, and in 1343 ^{1343.} the coinage was regulated by Statute; in 1352 the ^{1352.} offence of coining or bringing false coin into England was made treason, and confirmed ^{1417.} 1417. Edward III. coined the pound of silver into two hundred and seventy groats instead of two hundred and forty; this depreciation was carried still further by Henry IV., who coined it into three hundred and sixty, and by Edward IV. (four hundred and fifty). Henry VIII. debased the coinage by introducing large quantities of copper, and coining the pound into five hundred and seventy-six pennies, gaining £50,000; Under Edward VI. the practice was continued; the pound was coined into eight hundred and sixty-four pennies; Sharrington, Master of the Bristol Mint, struck £12,000 worth of bad shillings²; and in April, 1551, it was decided by the Government "to make 20000 pound weight for necessity somewhat baser to get gains £16000 clear." In August of the same year, it was found necessary to reform the coinage by making the real and nominal value agree, *i.e.*,

¹ Silver coinage was the rule for some centuries, gold coins not being struck officially until Henry III.

² The Lords of the Council had the privilege of private coinage.

the nominal shilling became the real sixpence, the country thereby losing about a million. In 1560, an elaborate scheme of reformation was carried out by Sir Thomas Stanley; the debased coin was called in, (a bounty of threepence being paid on every pound's worth of silver), and good money issued in its place. In 1562, 1576, clipping was declared treason owing to the facilities afforded for the offence from the coin being cut with sheers in the Mint. In 1640 a scheme of debasing the coinage was proposed, to obtain funds, which were much needed, but was negatived. In 1663, owing to the depreciation of the coinage from mutilation, the coins issued were stamped in a mill instead of being struck by a hammer, and the milled coins had their edges stamped with a legend to prevent clipping; the result was that the milled coin, being more valuable than the hammered, was sent out of the country and melted down. The debasement increased, and many projects of reform were debated under William III.; in 1695, a Bill for re-coinage, framed on the advice of Locke, was introduced by Montague, and after some alteration passed, 1696; the chief provisions of the Bill were that all clipped coin should be brought into the mint, and re-coined on the milled principle according to the old standard. To meet the loss, a sum of £1,200,000 was raised by a window tax, and a time was fixed after which no clipped money was to be a legal tender. Newton became Master of the Mint, other mints were established at certain provincial towns, as York, Chester, and Bristol, and the new issue was soon complète. Besides the Statutes mentioned above against the offence of coining, others were passed 1416, 1572, 1697, 1742, 1774, 1779, and 1803. All previous

Coinage Act,
1696.

Statutes against
Coining.

Acts were repealed in favour of an Act, 1832, and the laws were further amended, 1861. •

(c) *The Revenues of the Forests*, (which were Forest Laws. subject to peculiar jurisdiction), and *Forest laws*, the earliest being that of Canute, "I will that every man be entitled to his hunting in wood and field on his own possession, and let every one forego my hunting; take notice where I will have it untrespased on, under penalty of the full 'wite.'"¹ Under William, who "loved the tall deer as if he was their father," hunting was regarded as a royal privilege, and the forests as the private property of the King; trespassers were severely punished, often by loss of sight; large tracts of land were afforested, and their inhabitants driven away. This practice was continued by William Rufus, and Henry I. in his Charter of Liberties 1100, refused to give up the forests²; he also made several new ones which were surrendered by Stephen.³ In his Charter to London, however, Henry promises the citizens even greater hunting grounds than their predecessors. Henry established an independent system of Forest Courts (p. 58), subsequently perfected by Henry II., under whom visitations of the forest were held 1167 and 1175. In 1184 was issued the *Assize of Woodstock or the Forest*,⁴ Assize of the Forest, 1184. comprising sixteen articles of great strictness, and making attendance at the Forest Courts compulsory. In 1198 the Assize was re-issued by the Justiciar Geoffrey Fitz-Peter with still greater severity, and the fines exacted for breach of the laws were so burdensome, that by Magna Carta (Art. 44, 47, 48), persons dwelling outside the forest were exempted from attendance at the

¹ Sel. Charters, 74.

² Ib. 131. Art. 10.

³ Ib. 120.

⁴ Ib. 157.

Forest Charter,
1217.

Forest Courts unless "impleaded" for some offence; all forests made by John were to be disafforested, and all bad customs connected with the forest were to be inquired into and abolished.¹ These concessions were confirmed and increased by the *Forest Charter* of Henry III.,² November, 1217, which disafforested private land improperly afforested, and abolished the punishment of death and mutilation for forest offences. The Charter was, however, frequently infringed, in spite of a confirmation in 1225, and Edward I. was obliged to promise forest reform in the *Articuli Super Cartas*, 1300. An enquiry was held into the abuses by special Commissioners, and the reforms were carried out, 1301. In 1327, the Charter of the Forest was confirmed and ordered to be strictly observed, but, from Edward III., Forest Courts ceased to be independent, and were brought under the Court of King's Bench, whilst the Forest Laws fell into disuse until they were revived by Charles I., who enlarged the royal forests to an extent extremely prejudicial to the landowners, exacting enormous fines from trespassers. The boundaries of the forests were finally fixed by Parliament, 1641, as they existed in 1623.

Taxation.
Anglo-Saxon.

TAXATION.

Norman.

In Anglo-Saxon times extraordinary taxation (*e.g.*, the Danegeld) was levied with the counsel and consent of the Witan; the Norman Kings, before levying a tax, which was not a regular feudal due, consulted their council, probably as a mere matter of form as no instance of debate on a tax occurs during this period. Taxation was then practically arbitrary. The first opposition came from the clergy with the commencement of regular

¹ Sel. Charters, 302.

² Ib. 348.

taxation (*temp. Henry II.*); in 1163, Archbishop Becket quarrelled with Henry about the Dānegeld, Angevin. and in 1198, a demand for money was strongly resisted by Bishops Hugh of Lincoln and Herbert of Salisbury, with the result that the demand was withdrawn, and the Justiciar, Hubert Walter, resigned. Under John, taxes were levied sometimes arbitrarily, sometimes with consent; the King raised scutages and carucages (p. 181), exacted fines, and taxed moveables. In proportion, however, to the realization of the fact that taxation had become national, consultations on the subject increased, and with the imposition of the tax on moveables arose the idea that taxation should be more closely connected with representation (p. 128.) In Magna Carta, a clause was inserted against arbitrary taxation, but was omitted from the Confirmation of 1216, owing to the Ministers of the young King, Henry III., being unwilling to restrict their own power of raising money (p. 15.) Under Henry III., aids were frequently refused, and in the Charter of 1225, appears the principle of redress of grievances preceeding supply, perfected under Edward III. *Temp. Henry III.* After Magna Carta the tax on moveables was usually voted in the Great Council, and the principle of self-taxation by the different classes arose; barons, knights, burgesses, and clergy frequently voting different sums. Under Edward I., the idea *Temp. Edward I.* that those who are to be taxed ought to assent through their representatives became established, and the Commons asserted their right to take part in deliberations on taxation. After this right had been recognized by the *Confirmatio Cartarum*, 1297, there were frequent attempts at illegal taxation on the part of the Kings, 1304, 1312, 1332, and in 1340, Edward III. had to promise to exact

Stewart
Taxation.

nothing without the consent of Parliament. The Commons also increased their power over the revenue, by asserting their right of appropriating supplies, (this did not become a regular practice until Charles II., p. 113), auditing the public accounts (p. 114), and originating Money Bills (p. 111.) Under the Lancastrian Kings illegal taxation was rare, and even under the Tudors the assent of Parliament was usually obtained, though money was occasionally raised by *benevolences and monopolies* (p. 193.) James I. asserted his prerogative to levy impositions by his arbitrary will, and was aided by the servility of the judges, *e.g.* Bates' case (p. 192.) Parliament frequently remonstrated, but the illegal taxation was continued by Charles I., and was forbidden by the *Petition of Right*, 1628; in spite of this, however, occurred the famous case of Shipmoney, 1637 (p. 192.) Under Charles II., who received a fixed income of £1,200,000, taxation was heavy, though imposed by the authority of Parliament; James II. had recourse to the illegal expedient of levying the customs by Proclamation, before they had been granted by Parliament (p. 165.) By the *Declaration of Right*, 1689, it was declared illegal to levy money otherwise than with the consent of Parliament, and since the time of William III., the system of appropriation of supplies, based on the estimates for the year, has given Parliament the complete control of the administration.

Taxation may be divided into (a) *direct*, (b) *indirect*.

Direct Taxation. A. DIRECT TAXATION up to 1188 fell entirely on land.

Danegeld first levied, 991. 1. *Danegeld*,¹ first levied 991 by Ethelred II., (at the suggestion of Archbishop Sigeric), to buy

¹ Sel. Charters, 106, 203.

off the Danes ; imposed by consent of the Witan ; levied occasionally only, 994, 1002, 1007, 1011 ; consisted of 2/. on every hide of land ; abolished by Edward the Confessor, but re-imposed by William I. at 6/. a hide 1084.¹ It became a composition paid by the Sheriff, and was a very unpopular tax ; Stephen promised to abolish it,² but it continued until the reign of Henry II. In 1163 it re-appeared under the name of *hidage*, i.e., 2/.

Hidage, 1163.
Carucage temp.
Richard I.

on the hide, and under Richard I. became *carucage* or 2/. on the carucate of one hundred acres, the rate being raised to 5/. 1198³ ; 3/. on the carucate was demanded by John 1200.⁴ The tax was occasionally levied under Henry III., e.g., 1224, but died out as the newer forms of taxation gathered strength.

1 2. *Shipgeld*, (the precedent of shipmoney), (p. 192), *Shipgeld*. levied in Anglo-Saxon times for the defence of the realm, e.g., Ethelred 1008, made every three hundred hides liable to furnish one ship.

3. *Scutage*, a feudal tax of 2/. on the knight's fee (*scutum*), (first imposed 1156, and confirmed in the Toulouse war 1159,⁵) was usually paid in commutation of personal service, and was in this respect the descendant of the old *fyrdwite* ; it was frequently levied under Henry II., Richard I., and John. Magna Carta provided that no scutage should be imposed except by the common consent of the nation. It was revived occasionally by Edward I., and Edward II., but became obsolete in the next reign, though there is an instance of its remission by Richard II. 1385.

Scutage first
levied, 1156.
1159.
Becomes obsolete
temp. Edw. III.

¹ Sel. Charters, 81, *Flor. Wig.* This was probably at the same rate as Ethelred's tax, the hide before the Norman Conquest being only about thirty-three acres ; temp. William I. it was at about one hundred acres.

² Ib. 115, *Hen. Hunt.*

³ Ib. 256, *Rog. Hov.*, iv., 46.

⁴ Ib. 272, *Rog. Hov.*, iv., 107. ⁵ Ib. 129, *Gervas*, c., 1381.

It was abolished at the same time as feudal tenures and purveyance 1660.

Talliage.

4. *Talliage*, a tax on the towns and demesne lands of the Crown, usually levied by a poll tax. By the *de tallagio non concedendo* (p. 18), an abstract of the confirmation of the Charters 1297, held to be a Statute by the Petition of Right 1628, no talliage or aid is to be taken without the consent of all. In the *Confirmatio Cartarum* itself the word *talliage* is not used, and Edward I. accordingly evaded the spirit of the Statute by raising a talliage 1304; there was no opposition to this, but in 1312 a talliage was resisted by London and Bristol. In 1332 Edward III. attempted to collect a talliage but the opposition of Parliament compelled him to desist. The right was expressly abolished by the Statute of 1340, which was subsequently confirmed 1348, 1352, 1377.

Tax on
Moveables,
first imposed,
1188.

5. *Tax on Moveables*, (i.e. personal property and income); shadowed forth in the *Assize of Arms*¹ 1181; was first regularly imposed 1188, in the *Saladin Tithe*.² In 1193, one fourth of goods, or income, was taken for the ransom of Richard I.³ John obtained one seventh, and one thirteenth. Subsequent grants were usually one fifteenth, which became a *fixed amount* from 1335. Fifteenths continued to be voted until Elizabeth's reign. In 1525 Henry VIII., through Wolsey, made an illegal demand of one sixth of all goods, and appointed commissioners to collect the exaction; the opposition, however, was so violent that he had to give up the idea.

Subsidies,
first voted
temp. Richard
III.

6. *Subsidies*, a tax on property at the rate of $\frac{1}{4}$ /. in the pound for land, and $\frac{2}{8}$ for goods, was first voted temp. Richard II.; a subsidy, like a fifteenth,

¹ Sel. Charters, 154. ² Ib. 160. ³ Ib. 252, *Rog. Hov.*, iii., 210,

became a fixed sum of £70,000 (clerical subsidy £20,000). In 1397 a subsidy on wool and leather was granted to Richard II. for life; this was the first instance of granting taxes for life; the practice subsequently became usual (*see tonnage and poundage*, p. 185.) Subsidies were discontinued 1665 in favour of indirect taxation.

First instance of a tax granted for life, 1397.

7. *Poll Tax*. Proposed 1222 but brought to no effect.¹ One of a groat a head was levied 1377: a graduated poll tax, ranging from £6 13s. 4d. to one groat a head, was exacted in 1379, 1380; it was very unpopular, leading to the rising of 1381. A poll tax was levied as late as 1641, ranging from £100 to 6d., for the payment of the armies, and again in 1660 and 1689.

Poll Tax, 1377.

1379.

1641.

1660, 1689.

8. *Hearth Tax*, 2/. on every hearth; imposed 1663, it was the revival of an old exaction, and the first instance of a permanent tax; it was abolished 1689.

Hearth Tax, 1663—1689.

9. *Window Tax*, first imposed 1696, abolished 1851 in favour of a house tax.

Window Tax, 1696—1851.

10. *Land Tax*, 3/. in the pound, subsequently increased to 4/.; it was imposed 1690, and made perpetual 1798, when it was provided that it might be redeemed by compounding; this provision was not taken advantage of to any great extent.

Land Tax, 1690.

11. *Income Tax*, was imposed by Pitt, 1798, on all incomes except those under £200, removed 1802, re-imposed as property tax 1803—16, and as income tax 1842.

Income Tax, 1798.

12. *Tax on Succession* to personal property was imposed by Pitt, 1796; to real property by Mr. Gladstone 1853.

Tax on Succession, 1796.

B. INDIRECT TAXATION.

1. *Customs*, or duties on certain imports and exports, sprang from the royal prerogative of regu-

Indirect Taxation. Customs.

¹ Sel. Charters, 322, *Ann Waverl*, p. 296.

lating all matters of Commerce ; the earliest were *prisage*, i.e., the king's right to one cask of wine out of every ten casks in the ship's load at 20/. a cask ; *customs on general merchandise*, which were in fact a kind of licence to trade, and on *wool*, which was peculiarly liable to *maletotes* or evil tolls. By *Magna Carta* all merchants were to trade without being subject to any evil tolls, but only to the ancient and lawful customs. In 1275 the *Antiqua custuma* was settled by the " prelates, magnates, and communities, at the request of the merchants " at half a mark on the sack of wool and on three hundred woolfells, and one mark on the last of leather ; in 1294 this rate was raised by consent of the merchants to three marks on the sack and on three hundred woolfells, and ten marks on the last. By the *Confirmatio Cartarum*, 1297, the king's right of imposing arbitrary customs was restricted, (saving the custom of wools, skins and leather), and the *maletote* of 40/. on every sack of wool was released. In 1303, by the *Carta Mercatoria*, a custom of 40 pence on the sack and on 300 woolfells, and half a mark on the last, was obtained from the foreign merchants in return for a grant of certain privileges ; this custom of 1303, known as the *nova custuma*, was refused by the representatives of the citizens and burghers. By the *Carta Mercatoria* the customs were fixed on a regular scale. Wine 2/. a cask in addition to the *prisage* ; exported cloth 2/. to 1/. a piece ; other imports and exports, 3d. in the pound value ; in 1309, the *Articles of Grievances* petitioned against these new customs, and the duties on wine and merchandise were suspended for a year ; they were re-imposed 1310 ; again suspended by the Lords Ordainers 1311—22 ; they were confirmed

Prisage.

General Merchandise.

Wool.

Maletotes.

Antiqua Custuma,
1275.

1294.

Carta Mercatoria,
1303.Nova Custuma,
1303.

1328, and by the *Statute of Staples*, 1353, fixed at 10/. on the sack and on three hundred woolfells, 20/. on the last, and 3d. in the pound. Edward III. taxed wool illegally on several occasions, usually with consent of the merchants, and Parliament petitioned against this way of raising money 1339, 1343, 1346; finally by statutes of 1362 and 1371 it was declared that no grants on wool should be made without the consent of Parliament. From this time the power of Parliament in indirect taxation was recognised, and illegal impositions of duties became rare.¹ Mary, by Proclamation, imposed a custom on cloth, 1557, and on French wines; and Elizabeth, one on sweet wines. James I. made illegal impositions, and 1608 issued a Book of Rates imposing new and heavy duties on various articles.¹ This book was protested against by the House of Commons, 1610, 1614, and such impositions were declared illegal by the *Petition of Right*, 1628, and by the *Bill of Rights*, 1689. The Customs were granted to Charles II. for life, and were levied illegally by James II., on his accession, by Proclamation, before they had been granted by Parliament. Under William III. and Mary the Customs were granted for four years only; since that time they have much increased in value, and now bring in more than nineteen millions annually.

2. *Tonnage and Poundage*, were in reality the old customs on wine and merchandise. In 1308, the English merchants compounded for the *prisage* by paying 2/. a tun on wine; in 1347, 2/. a tun and 6d. in the pound on merchandise, except the staple commodities of wool, leather, etc. From 1373, tonnage and poundage became a regular Parlia-

Statute of
Staples, 1353.

Illegal taxation
of Wood *temp.*
Edward III.

Book of Rates,
1608.

Tonnage and
Poundage.

Regularly
granted, 1373.

¹ Authorised Books of Rates were issued by Parliament, 1642, 1660.

mentary grant; it was regulated afresh at the beginning of each new reign, and was granted to the King for life from Henry V. to Charles I., in whose reign it was granted for a short time only.

Excise Duties,
1643.

3. *Excise Duties*, or duties on certain articles of consumption and home manufacture, as beer, cider, tea, groceries, etc., originated under the Commonwealth, 1643. After the Restoration, they were granted to Charles II. for life; they subsequently increased very much in number, and though they have now been greatly reduced, they bring in more than twenty-five millions.

Post Office
originates *temp.*
James I.

4. *The Post Office*, first established under James I., and developed under Charles II., has, since the introduction of the Penny Post in 1840, yielded a large annual profit to the Government; it now brings in almost seven millions a year.

The Corn Laws.

First Act, 1360.

1394.

1425, 1436.

1463.

1534.

1562.

The Corn Laws. Up to 1360, exportation of grain was by general custom and consent forbidden; in that year an Act of Parliament forbade any exportation except to places exempted by the royal licence. In 1394, (17 Richard II.) it was provided that export might take place except to places forbidden by the King, and the export was further regulated 1425 (4 Henry VI.) In 1436 (15 Henry VI.), export was prohibited except when the price was 6/8 a quarter and under. In 1463, (3 Edward IV.) a similar limitation was imposed on importation. In 1534, (25 Henry VIII.) exportation was forbidden, except with the royal licence, owing to the decline of agriculture in England; and in 1562, (5 Elizabeth) the price at which exportation was permitted was made 10/. a quarter. Duties of increasing amount on the exportation of corn were imposed 1570 (13 Elizabeth), 1604 (2 Jac. I.), 1624 (21 Jac. I.), 1660 (12 Car. II.), and 1670 (22 Car. II.) In 1670,

too, import duties varying from 8/. a quarter, when ^{1670.} the price was over 53/4, to 21/9, when under 44/., were imposed. In 1689, export duties were abol- ^{1689.} ished, exportation being encouraged by bounties. Importation was regulated 1732, and in 1773 by Burke's Act (13 George III.) the import duty was ^{Burke's Act, 1773.} fixed at sums varying from the nominal sum of 6d. at 48/. to 24/3 at 44/. and under; by the same Act, export was forbidden, when the price was over 44/. a bounty of 5/. being given below 44/. In 1791 (31 Geo. III.) and 1804 (44 George III.), ^{1791, 1804.} the price at which nominal import duty was exacted was raised to 54/. and 66/., whilst export was forbidden (1791) at 46/., and (1804) at 54/. In 1814 (54 George III.) duties on exportation were ^{1814.} abolished; in 1815, importation was forbidden ^{1815.} when corn was under 80/. a quarter; reduced 1822 ^{1822.} to 70/. with a duty of 12/., which was to be 5/. when the price reached 80/. In 1828 a sliding scale of duties was established under an Act of the Duke of Wellington, fixing the duties at 36/8 at ^{Duke of Wellington's Act, 1828.} 50/., 24/8 at 62/., decreasing to 1/. at 73/. Several attempts were now made to obtain a ^{Sliding Scale.} repeal of the Corn Laws (which had already, ^{Agitation for the Repeal of the Corn Laws.} *e.g.*, 1815, led to serious bread riots), *e.g.*, by Mr. Whitmore 1833, and Mr. Hume, 1834; and in 1838 was formed the Anti-Corn Law League, ^{Anti-Corn Law League.} headed by Mr. Charles Villiers, (who made several motions in Parliament for the repeal of the laws, 1839—1843) by Mr. Cobden and Mr. Bright. In 1842 Sir Robert Peel modified the sliding scale from 20/. ^{Peel's Sliding Scale, 1842.} at 51/., to 1/. at 73/.; but opposition still continued, and, in spite of all kinds of prognostications of evil, the Corn Laws were abolished, on the ^{Abolition of the Corn Laws, 1846.} motion of Sir Robert Peel, 1846, the Act to come into operation 1849. A nominal duty of 1/. a quarter was continued, but abolished 1869.

Assessment of
Taxes.
Anglo-Saxon.

ASSESSMENT OF TAXES.

1. *Anglo-Saxon*, by the Sheriff in local courts ; usually compounded for by the Sheriff.

Norman.
Domesday
Survey, 1085.

2. Norman, According to *Domesday Survey*.¹ All early taxes fell on land. *Domesday Survey* (from *Domus Dei*, the name of a chapel in the Cathedral at Winchester where the record was deposited), was taken 1085 by the King's officers, on the sworn information of the sheriffs, barons, lords of manors, representatives and reeves of hundreds, and the priest, reeve, and six villeins from each township. Questions were put as to the holders of manors in the time of Edward the Confessor, and at the time of the survey ; the extent of manors in *hides*, the number of villeins and freemen, the extent of wood, pasture, mills, and fisheries ; the value at the time of the survey, and in Edward the Confessor's time. The result was an accurate, though not exhaustive, basis of rating, *e.g.*, Northumberland and Westmoreland were omitted, as well as most of Cumberland, Lancashire, and Durham. *Domesday* mentions the customs of towns. Many towns show a great decrease of population since Edward the Confessor, especially in the north, owing to William's severity ; the great landholders prove to be all Normans, *e.g.*, Earl of Mortain has 793 manors, Earl of Richmond, 442, Odo of Bayeux, 439, William himself, 1400.

Assessment of
Feudal Taxes.

3. *Feudal taxes* were assessed on the *knight's fee*, not on the *hide*, but *Domesday* remained the basis, as the number of hides in a knight's fee was easily reckoned.

Change of ownership, etc., occasionally demanded fresh assessment, which was made by itinerant officers of the Exchequer, *e.g.*, the talliages of 1169, 1173.

¹ Sel. Charters, 81, 86, 208.

The contributions of the boroughs were assessed by the sheriffs, (the boroughs often obtaining charters to pay *firma burgi* or rent instead). (ch. viii.) *Scutages* Scutages. were assessed on the report of the individual knight, and were often levied inaccurately, though in the case of land there could not be extensive cheating. *Moveables and personal property* Moveables. were assessed by a jury of sworn knights, or by four or six lawful men of the parish, *e.g.*, *Assize of Arms*, 1181, *Saladin Tithe*, 1188. The Carucage of 1198 was assessed by the Carucage, 1198. stewards of the barons, bailiffs, four lawful men of the township, and two lawful knights of the hundred.¹ Assessments were often local, *e.g.*, 1220, two Local Assessment. knights were chosen in the County Courts to assess carucage; 1225, four knights in each hundred; 1232, 1237 the reeve and four men from each township.

Customs were also assessed by collectors of customs in various towns, *circ.* 1275. From 1295 taxes were granted by an assembly, representative of all classes. In 1371 a grant of £50,000 was made by Parliament to be raised by an assessment of 22/3 on each parish, on the supposition that there were 40,000 parishes; there were found to be in reality under 9000, and the rate had to be raised to 116/.

LOCAL TAXATION.

Anglo-Saxon. The *trinoda necessitas* was incumbent on all holders of land, except of land held in *frank almoign* (p. 204): 1, *burhbot*, maintenance of fortifications; 2, *brigbot*, repair of bridges; 3, *fyrð*, duty of military service (ch. x.)

County Rates were originally levied and assessed in the shire courts for county purposes, *e.g.*, police, highways, prisons, and, up to the reign of Elizabeth, to pay knights of the shire. They were defined by Statute,

¹ Sel. Charters, 257, *Rog. Hov.*, iv., 46.

Local Taxation.

Anglo-Saxon.

Trinoda
Necessitas.

County Rates

1530, though frequently increased ; rates for different purposes were collected separately, until 1739, when justices in quarter or general sessions were empowered to levy a general county rate, assessed on all townships and parishes, to be collected by overseers with the poor rate, and paid by them to the high constable of the hundred. The county rate has been latterly applied to various fresh purposes, *e.g.*, the maintenance of Lunatic Asylums, 1808.

Borough Rates. *Borough Rates*, levied by the town council for borough purposes, such as lighting, either paid out of the poor rate, or collected separately.

Poor Rates. *Poor Rates*, levied by the churchwardens and overseers of each parish, must be formally allowed by two justices.

Church Rates. *Church Rates.* (See chap. ix.)

Clergy. *Taxation of the Clergy.* (See chap. ix.)

National Debt, 1664. THE NATIONAL DEBT commenced 1664, was facilitated by the growth of banking in the Civil war ; money had been borrowed freely by the Plantagenet kings from the Jews, and Italian bankers, and in 1345 Edward III. repudiated his debts. Similarly Charles II. repudiated the Debt 1672, though interest was subsequently paid on the sum till 1683. In 1694, on the advice of Montague, £1,200,000 was raised at 8 per cent., the subscribers being incorporated as the *Bank of England* : this debt was *funded*, *i.e.*, secured in the public funds. In order to prevent the Crown becoming independent of Parliament by the aid of the Bank, it was provided that no money should be advanced to the Sovereign by the Bank of England without the consent of Parliament. At the end of William III.'s reign the Debt amounted to sixteen millions ; under Anne it grew to fifty-four millions, (the interest

Origin of the Bank of England, 1694.

being reduced to six per cent., and subsequently, *temp.* George I., to four); during the Seven Years war, 1756 to 1763, to one hundred and thirty-nine millions; in the American war to two hundred and forty eight millions; and in the French war to eight hundred and forty millions; it is now seven hundred and nine millions, costing annually for interest and management twenty-eight and a half millions. There are also twenty-two millions of *unfunded* debt on Treasury bills, Exchequer bills and bonds, (invented by Montague, 1695), redeemable by the Government at short dates. Unfunded Debt.

In 1716 Sir R. Walpole proposed to get rid of the debt by a *Sinking Fund*; the scheme was subsequently developed by Pitt, 1786, and was merely to put by one million a year, which at compound interest would eventually swamp the debt; to get a spare million to put by, however, money had often to be borrowed, so the scheme failed; it would have been simpler and equally efficacious to pay off a million a year, instead of laying it by. Walpole's Sinking Fund, 1716.
Pitt's Sinking Fund, 1786.

INSTANCES OF ILLEGAL AND ARBITRARY EXACTIONS.

1278. Writ of '*quo warranto*,' authorised by the *Statute of Gloucester*, to inquire into the titles by which estates were held. This was speedily made a source of extortion. Illegal Exactions.
Quo Warranto, 1278.

1278 and 1292. Knighthood was made compulsory, (under penalty of a fine), on all whose estate reached £20 a year. Compulsory Knighthood, 1278, 1292.

1294. Edward I. seizes wool, and only releases it on payment of a *maletote*. Seizure of Wool, 1294.

1297. Edward I. exacts corn and meal from the counties, and again seizes wool. Of Corn and Wool, 1297.

1303. Increase of customs, contrary to the *Confirmatio Cartarum*, 1297. Increase of Customs, 1303.

1304, 1312, 1332. Talliage on demesne, contrary to the *Confirmatio Cartarum*, 1297. Talliages, 1304, 1312, 1332.

Aid, 1346. 1346. Aid to knight the Black Prince, contrary to the statute of 1340.

Loan, 1347. 1347. A loan on wool and increase of the customs.

1399. Richard II. exacted sums of money, under the name of *le Plesaunce*, from seventeen counties.

I.e Plesaunce,
1399.
Duty on Wine
and Cloth, 1557

1557. Mary imposed a duty on French wines and foreign cloth, by Proclamation.

Elizabeth imposed a duty on sweet wines.

Case of
Impositions, or
Bates' Case,
1636.

1606. James I. imposed a duty of 5/. a hundredweight on currants, in addition to the ordinary poundage; this led to the *Case of Impositions*, or *Bates' Case*, an action brought by the Crown against Bates, a Levant merchant, who had refused to pay. Judgment was for the Crown on the ground (1) that customs are the result of foreign affairs, and all matters concerning foreign affairs are in the King's absolute power; (2) seaports are the King's gates which he may open and shut at pleasure; (3) old customs had been imposed by prerogative, not by Parliament, and the Statutes of Edward I. and III. were valueless, as they could not bind their successors. This judgment has been well called "subversive of all liberty."

Exactions, 1628. 1628. Illegal impositions, distraint of knighthood, and other illegal exactions.

Ship Money,
1634.

1634. *Shipmoney*, (due to Attorney General Noy). A writ was issued to London and other seaports to supply a certain number of ships, and to assess all the inhabitants—on the precedent of Anglo-Saxon *Shipgeld* (p. 181.) London and some ports in Sussex vainly remonstrated. The writs were extended by Chief Justice Finch to inland counties, and the sheriffs were to assess the inhabitants; this caused great murmurs, though most persons paid. John

Hampden, however, refused, and was proceeded against; he was defended by Oliver St. John, who argued (1) that particular charges can only be imposed by Parliament; (2) that the alleged precedents applied to maritime towns only; (3) that the fact of the Kings demanding loans, which they had to promise to repay, showed they had no power to tax; (4) that statute law, from *Magna Carta* to the *Petition of Right*, was against the exaction. Seven judges decided for the Crown, five for Hampden. Justices Crooke and Hutton denied the Crown's right entirely. Chief Justice Finch held that the Crown's authority was absolute. The decision was very unpopular, and Shipmoney was abolished and declared illegal by the Long Parliament, 1641.

Money was also raised by

1. *Excessive Fines* (pp. 49, 75).

Fines.

2. *Benevolences*, which were first exacted by Edward IV., 1473, though their prototype of forced loans had been levied by Henry III., Edward II., and Richard II.; they were supposed to be 'free gifts,' but were really more or less compulsory. They were declared illegal by Richard III., 1484, who, however, 1485. was compelled by want of money to exact one in the following year. They were raised by Henry VII., in 1492 and other years, chiefly by the aid of 1492. Archbishop Morton, the inventor of the dilemma of *Morton's Fork*, i.e., if a man lived sumptuously he Morton's Fork. was told that his wealth was apparent; if sparingly, that his economy must have enabled him to lay by great store of riches; in either case his gift must be large. They were raised by Henry VIII., 1522, 1522. 1525, by the aid of Wolsey; in 1545 Henry levied 1525, 1545. another; those who refused to give were sharply dealt with, one Richard Reed, an Alderman of London, being sent to serve on the Scottish border

Temp. Mary and Elizabeth.

1614.

1627.

Monopolies.

Opposition to them, 1571.

1597.

1601.

1621.

as a common soldier by way of punishment. Forced loans were demanded by Mary, and by Elizabeth, who committed those refusing to lend to prison, though the latter Queen seems to have punctually paid her debts. In 1614 James I. demanded a Benevolence; it was declared illegal by Coke who, however, changed his opinion, and Mr. Oliver St. John was fined £5000 and imprisoned for refusing to contribute. Charles I. continued the practice, and in 1627 Sir Thomas Darnell and five others were imprisoned for refusing to contribute to a loan (p. 24); in 1628 Benevolences were explicitly forbidden by the Petition of Right. "Voluntary subscriptions" were also forbidden to be collected without the consent of Parliament, 1663.

3. *Monopolies*, which arose from the prerogative of the Crown to regulate all matters of trade. Privileges and exclusive rights of trade were granted to merchants as early as the reign of William I., in return for money. The system was much abused under Elizabeth, who granted her favourites Monopolies for dealing exclusively in different articles, such as salt, vinegar, leather, and coal. In 1571 a question was asked in Parliament about the abuse, but the proposer (Mr. Bell) was summoned before the Council, and the subject dropped until 1597, when an address on the subject was presented to the Queen, who promised to recall the illegal Monopolies. The abuse, however, continued, and in 1601 a Bill against them was introduced by Lawrence Hyde, and so strongly supported that the Queen was obliged to yield. Monopolies, however, continued, and were freely sold by James I.; in 1621 Sir Giles Mompesson was impeached for abusing his Monopoly of gold and silver thread by manufacturing it of a baser metal. In 1624 Mono-

polies were abolished by Parliament, an exception being made in favour of *patents*, which were to give a monopoly for 14 years; Monopolies were, however, revived by Charles I., who issued them to companies, but were finally withdrawn 1639.

Their abolition,
1624.
Patents.

Statutes in limitation of arbitrary taxation.

Statutes against
Exactions.

Magna Carta, 1215.

Confirmatio Cartarum, 1297.

Ordinances of 1311.

Right of talliage abolished, 1340, 1348.

King forbidden to tax wool, 1362, 1371.

Benevolences declared illegal, 1484 (1 Ric. III.,

c. 2.)

Monopolies surrendered, 1601, 1624, 1639.

Petition of Right, 1628 (3 Car. I., c. 1.)

Ship money, and distraint of Knighthood, abolished, 1641 (16 Car. I., cc. 14—20.)

Feudal incidents surrendered, 1660 (12 Car. II.,

c. 24.)

Bill of Rights, 1689 (1 William and Mary, Sess. 2, c. 2.)

CHAPTER VI.

THE LAND.

Tenure of Land
before the
Norman
Conquest.
Mark System.

Land tenure before the Norman Conquest.

The Mark System, formed essentially for an agricultural people whose powers of farming were equal, was the origin of all land tenure amongst Teutonic nations. By it the arable land of the *Mark* (or *March*) belonging to the whole tribe was allotted annually, or triennially, as the case might be, to the owners of homesteads, to be held until the time came for it to lie fallow, whilst the pasture and waste land was held in common by the heads of families. As agriculture improved the Mark System became impossible. A man, who farmed better than his neighbours, found himself wronged by having a no more lengthened hold over his land than his more idle or incompetent fellow mark men ; on the Saxon migration to England the system failed to take root, and absolute ownership was quickly established, *land becoming indispensable to the position of a free man*. Although the *Mark System* had no influence on the political organisation of the country, and died out after the settlement of the Saxons, it left a few traces of its existence, some of which are still to be observed, *e.g.*, the township (*see below*) was merely a developed and altered form of the *mark* ; the possession of common pasture and waste land by certain communities, (*e.g.*, Port Meadow at Oxford), and the system of common cultivation on the threefold plan of sowing one third part with spring crops, one third with autumn crops, and letting one third lie fallow ; a system which was by no means uncommon a

Its failure in
England.

Traces of its
existence.

century ago, and which is even now followed in certain localities. Another trace of the Mark System may be seen in the early

Importance of Kin, which continued in some Importance of Kin. degree throughout the Anglo-Saxon period; e.g., kinsmen fought side by side in the *fyrð*, shared in the *werigild* paid for their slain brethren, contributed to their brother's fine, and became legal *compurgators* for one another (pp. 69, 70, 75.) The patronymic *ing* is frequently found in the names of villages, which were originally occupied by communities united by blood, e.g., *Melling*=the home of the family of Mell.

After the Saxon migration to England, absolute ownership was quickly established; and, up to the Norman Conquest, the two chief divisions of land in England were into *Folcland*, where the state was the owner, and *Bocland*, where a private individual was the holder.

Folcland (Folkland) was the surplus land which Folcland. the immigrating Saxons were unable to occupy. This surplus belonged to the state, and at first could only be alienated (even in part) by the national consent expressed through the *Witan* (p. 89.) Towards the end of the Anglo-Saxon period the *folcland* tended, with the growth of the royal power, to become *terra regis* or crown land (p. 169), the *Witan* merely being witnesses to grants made from it; (even as early as the time of Alfred land is granted by the King alone). *Folcland*, as such, could only be granted for a definite term, returning to the nation at the expiration of the period, and was held on certain conditions of service to the state, such as *purveyance* (p. 173.) *Folcland* could however be converted into *Bocland*, Bocland. or land held in full ownership, by grant of the King

and Witan under *charter* (or *book*) to any particular individual. Occasionally owners of *bocland* held it as part of the original allotment after the migration, but it was more often severed from the *folc-land*, much of which in time became *bocland*. The holders of *bocland* were exempt from all services to the State except the *trinoda necessitas* (p. 189.)

Lænland. *Lænland* was either *folcland*, or *bocland*, leased out by its owners, when it grew too large for them to cultivate, to inferior freemen and *Læts* (ch. vii.)

Ethel. *Ethel*, (the same word as *Etheling*, of noble blood, showing the connection between nobility and the possession of land), was land forming part of the original allotment; it was generally inherited, though sometimes acquired by other means, and was always held in full ownership. "Its evidence," says Professor Stubbs, "is in the pedigree of its owner, or in the witness of the community."

Alod. *Alod*, originally the same word as *Ethel*, is used in a wider signification including *bocland* as well as *Ethel*. Allodial land, as being held in full ownership, was, up to the Conquest, always transmissible by will.

Feudalism. **FEUDALISM.**

Before
the Norman
Conquest.

(a.) *Before the Norman Conquest*, did not exist in England as a complete system; there are, however, several germs to be traced, which would in all probability have developed into a system analogous to Continental Feudalism, even had the Norman invasion never taken place. The growth of a tendency towards feudalism, which is very apparent just before the Norman Conquest, is traceable in the change from personal to territorial relations. Feudalism has been described as "an organisation based on land tenure in which all

¹ Stubbs, Const. Hist., i., 76.

men from the highest to the lowest are bound together by reciprocal duties of service and defence." It should, however, be carefully borne in mind that *military service is not essential to feudalism; the essential point is the connection with land.* Anglo-Saxon feudalism was, *as a territorial system, incomplete, for there was no supreme land-owner in England;* the land belonged to the nation, not to the King as it did abroad. *As a judicial system it was more highly developed;* the King came gradually to be regarded as the source of justice, and gave rights of jurisdiction to his thegns (*sac* and *soc*) (p. 68), who in their turn administered justice to the suitors at their courts. With these grants of *sac* and *soc* began the connection between jurisdiction and property, clearly shown in Athelstan's law compelling a landless man to have a lord¹; the idea being that if a man had land the law had a certain hold on him through it.

Incomplete as a
Territorial
System.

Feudal tenures did not exist in England before the Norman Conquest; for although military service was owed by the holders of *folcland* and *bocland*, they did not hold their land *on the condition of service*, and although they were bound to the King by a special oath, the tie still remained a *purely personal one*.

Feudal tenures
before the
Norman
Conquest.

The distinct germs of feudalism in England before the Norman Conquest are—

Germs of
Feudalism in
England in
Pre-Norman
times.

1. The personal tie existing between the King and his thegns, and between the greater and lesser thegns; a tie at first entirely unconnected with land, but, tending by degrees to grow into a territorial relation.

2. The practice of *commendation*, by which, however, a man only did service at his lord's court,

¹ Sel. Charters, 66.

and did not give up his land and become the lord's vassal as abroad.

3. The rights of jurisdiction over suitors.

4. The appearance of disintegration in the creation and growth of great earldoms, *e.g.*, in Canute's four earls.

5. Obligation to military service, which becomes a personal duty *practically depending* on the tenure of land.

6. The gradual tendency of the public land to become *terra regis*, and thus to make the King supreme landowner.

The Comitatus. *Commendation and the growth of the Comitatus.*

In the *Comitatus* we may trace the germs of Feudalism, as it existed in England before the Norman Conquest. The strong ties, mentioned by Tacitus as existing between the *princeps* and his *comites*, continued after the Anglo-Saxon migration with certain modifications.

Gesiths.

The King's *comites* or *gesiths*, who were his personal followers in war, and his household in peace, at first occupied an inferior position, and were looked down upon by the *eorls*, or nobles by blood; by degrees, however, they assumed a more important position with the growth of royal power, and with their employment in war as a military organisation; finally founding a nobility of service which absorbed the old nobility of blood. The first step in this growth was seen when the '*gesiths*' received grants of folcland by charter after the migration, and their ranks consequently became filled with men who, having accepted grants from the King, were bound to him by the closest personal ties. Abroad, the *gesiths* received grants of the King's land; in England, of the public land. Thus abroad, a feudal noble was placed in a different relation to

Growth of the order.

the King; in England he had received a double set of duties, (1) those connected with his old relations to the King, (2) his new duties to the nation, as the holder of the public land. The 'Gesiths,' *temp.* Athelstan, became the King's thegns, or servants. To this service, however, (whose germs existed in the *ἐταῖροι* and *θεραπονῆτες* of Homer), no sense of degradation attached, and in the *Bower thegn* and *Horse thegn* of the Saxon Kings may be seen the prototypes of the Lord Chamberlain and Master of the Horse of the present day. It became apparent that the quickest way to distinction was to serve the King; the King's thegns obtained privileges such as high wergild, and high value of oaths; and as they gradually made these hereditary, they became 'the noble class,' partly excluding, and partly absorbing the old nobles or *eorls* (ch. vii.) There quickly grew up a connection between the nobility of thegns, and the possession of land, *e.g.*, Edward's law by which a Ceorl with five hides of land became thegnworthy.¹ In Canute's laws there was a division of thegns, into *twelve hide* men with a wergild of 1200 shillings, and *two hide* men with a wergild of 200 shillings. The greater thegns *commended* themselves to the King and became his thegns, the lesser ones became the thegns of nobles greater than themselves; the landless man came to be regarded as an outlaw, and, though he might choose his lord, was compelled to *commend* himself to someone on the mutual terms of faithful protection and faithful service. *Commendation* in England Commendation. was simply a personal relation; the land was given up on *commendation*, but given back again; and though the owner was bound to perform certain services, the land was *not held on the condition of their performance*. Abroad, a man by *commending*

¹ Sel. Charters, 65.

himself, gave up his land, and became the lord's vassal. 'The King's thegns were not only important to him in war, but they furnished him with a trusted body of men from whom to select his most important officers; their relations with their sovereign greatly aggrandised the royal power, as, with so many dependent on him, a King could rarely fail to secure a majority in the Witenagemot on any subject (p. 89.)

Feudalism after
the Conquest.

Feudalism after the Norman Conquest.

Continental
Feudalism.

Continental Feudalism was not of purely Teutonic origin, having a close connection with Roman law. It arose from the adoption by ecclesiastical corporations of the old Roman custom of granting *usufruct of land* to temporary holders in return for definite services. This policy was soon pursued in lay property; the King, as the supreme land-owner, granted lands to his followers in return for service; these lands, at first a temporary grant, usually for one life, gradually became hereditary, as they were often renewed to the heir of the late holder, especially when he was ready to pay for the succession.

Usufruct of
Land.

Modified
Feudalism of
William I.

Feudalism, as introduced into England by William I., was a great modification of *Continental Feudalism*, with the drawbacks of which William was well acquainted. The feudal barons of France were possessed of immense estates which were let to tenants by the process of *subinfeudation*; and as these tenants owed military service to the barons as their immediate lords, those barons became in many cases more powerful than the King himself. William, in introducing the feudal system, avoided this danger by granting his followers scattered lands, and never permitting a whole county to be held by one individual, the only exceptions being

Subinfeudation.

the Counties Palatine (*see below*). He also retained the supreme power in his own hands, and kept up the *hundred*, and *shire courts*, refusing to grant the nobles jurisdictions exempt from the latter. He forbade inter-marriages between the great nobles, and at the famous meeting at Salisbury, 1086, exacted a direct oath of fealty to himself from every tenant of land in the kingdom, whoever was his lord. As a consequence, there was never a *feudal system of government in England*. William, however, whilst restraining feudalism as a *government*, completed it as a *land system*; *folcland* became the royal land; all surrendered their land to the King and received it back from him, whilst the *free socagers* became the lords' vassals.

Feudal tenure, the theory of which was elaborated by the Norman lawyers, implied, in contradistinction to the Anglo-Saxon system, tenure on certain conditions of service, violation of which would forfeit the lands to the lord; the lord had also a partial ownership of the land which reverted to him on forfeiture or death, in the latter case being granted to the heir on payment of a *relief* (p. 206.) Upon receiving his lands, a tenant performed the ceremony of *homage*, *i.e.*, kneeling with sword ungirt and uncovered, he swore to become the lord's *man* (*homo*). Feudal Tenure.

There were a variety of tenures after the Norman Conquest, *e.g.*, Idea of double ownership.

Knight Service, which was entirely military. A knight's fee (*feudum*—a certain quantity of land of £20 annual value—*temp.* Henry III., £15), was necessary for tenure by knight service (*per militiam*). The tenant by knight service was bound to follow his lord in the field, when required, Feudal Tenures after the Norman Conquest.
Knight Service.

for forty days every year, at his own expense. *Temp.* Henry II. this personal service could be commuted by the payment of *scutage* (p. 181.) Tenure by *knight service* was liable to the feudal incidents (p. 205); it was abolished 1660 by 12 Car. II., c. 24.

Grand
Serjeanty.

Grand Serjeanty was tenure *per magnum servitium*, i.e., on condition of rendering special services to the King, such as filling the office of Butler or Champion. "It was in most other respects like *knight service*; only a tenant by *grand serjeanty* was not bound to pay aid or escuage, and when tenant by *knight service* paid £5 for a relief on every knight's fee, tenant by *grand serjeanty* paid one year's value of his land."¹

Cornage.

Analogous to this was tenure by *Cornage*, i.e. the tenant was to wind a horn to give notice to the King's subjects of the approach of the Scots or other enemies.

Petit Serjeanty.

Tenure by *Petit Serjeanty*, analogous to tenure by *free socage* (see below), bound the tenant to "render annually to the King some small implement of war, as a bow, a sword, a lance, an arrow, or the like."

Frankalmoign.

Frankalmoign (*free alms*) was tenure by which the members of a religious house held lands from the donor, to them and their successors for ever, on certain undefined conditions of spiritual service, such as praying for the souls of the donor and his heirs. Lands were held in Anglo-Saxon times by religious houses in *liberè eleemosyna*, and were exempt from all service except the *trinoda necessitas* (p. 189.) *Frankalmoign* was exempted from the statute of Charles II., 1660.

Free Socage.

Tenure by *free socage* was tenure by certain

¹ Blackstone.

fixed and specified services, such as by ploughing the lord's land for three days, by fealty and a fixed rent, or by fealty alone. It is opposed to tenure by *knight service*, where the service was uncertain. In 1660, almost all tenures became tenure in *free socage*.

There was another kind of socage called *villein* Villein Socage. *socage*; tenure by certain but menial services. (See *Villeins*, ch. vii.)

Burgage tenure, which was a kind of socage, was Burgage Tenure. "where houses or lands, which were formerly the site of houses in an antient borough, were held of some lord in common socage by a certain established rent."

Borough English, a variety of burgage tenure, was Borough English. where the *youngest* son inherits instead of the eldest.

Gavelkind, was a tenure peculiar to Kent, (though Gavelkind. it is said by Selden to have been general before the Norman Conquest). The most remarkable features in it were that the tenant could devise the lands so held by will, and that in cases of intestacy the lands descended to all the sons equally.

Feudal Incidents were attached to tenure by Feudal Incidents. knight service. They were—

1. *Aids*. The three regular feudal aids were due Aids. (1) to make the lord's eldest son a knight; (2) to provide a dowry for his eldest daughter on her marriage; and (3) to ransom the lord's person. Irregular aids were, however, frequently demanded Irregular Aids. by the lords for various reasons, such as to pay off a debt. This system led to great abuses, and by the twelfth article of Magna Carta it was provided that no scutage or aid, with the exception of the three regular aids, should be imposed except by

the Common Council of the nation, and that the three regular aids should be reasonable, whilst article fifteen forbids *mesne* lords (*i.e.*, lords who have tenants holding under them whilst they themselves hold of a superior lord, as the King,) to exact any aids at all except the three regular ones. In 1275, the Statute of Westminster I. (3 Edward I.), fixed the aid for marrying the eldest daughter, or knighting the eldest son, at 20/. on each knight's fee in the case of the inferior lords; the same regulation was applied to the tenants *in capite*, *i.e.*, holding directly of the King, 1351 (25 Edward III.) Illegal aids, however, continued to be exacted, and were forbidden by the *Confirmatio Cartarum*, 1297. The three customary aids continued to be exacted during the reign of Edward, but gradually sank into disuse; they were abolished *together with all other feudal incidents* by Statute (12 Car. II.) 1660.

Reliefs.

2. *Reliefs*, originating when fiefs were not hereditary, were sums paid to the lord by the heir before he could enter upon possession of his lands. The sum was fixed by William I. at 100/. (or, in *lieu*, so many arms) for each knight's fee; by William II. arbitrary reliefs were exacted, but Henry I., in his *Charter of Liberties*, enacts that reliefs shall not be as in his brother's time, but shall be just and lawful.¹ *Temp.* Henry II. the regular reliefs were 100/. for a knight's fee, and £100 for a barony; these reliefs were only payable if the heir was of age; if a minor, he became a ward, and paid no relief. *Magna Carta*, Articles 2 and 3, confirms the ancient relief.²

Heriots.

Before the Norman Conquest an analogous system of paying *heriots* was in vogue. A *heriot*³ was

¹ Sel. Charters, 100.

² *Ib.* 297.

³ See Laws of Canute, c. 72; Sel. Charters, 74.

paid, on the death of a tenant, to the lord, and consisted of the best beast or chattel, or of arms, or of a sum of money. It differed, however, from the relief, in being a *debt paid on behalf of the dead man to the lord*, the heir succeeding naturally by allodial right ; whilst in the feudal tenure the heir could not obtain *livery of seisin*, or enter on his land until the relief had been paid. Livery of Seisin.

3. *Premier Seisin* was the right which the King had to exact from the heir of any of his tenants in *capite*, of full age, an additional relief of one year's profits of the land. *Premier seisin* only applied to tenants *in capite*. Premier Seisin.

4. *Wardship*. If the heir was under twenty-one if a male, or under fourteen if a female, the lord was entitled to the wardship, and had the custody of the minor and land, without having to account for the profits of the land. Wardship was often a source of great exaction ; it was abolished by Henry. I. in his *Charter of Liberties*, which made the widow, or next of kin, guardian of the land and children.¹ By the *Assize of Northampton*, however, the wardship was expressly given to the lord.² By *Magna Carta*³ 4 and 5, it was provided that the guardians should only take just and fair profits, and should not abuse their trust. Wardship.

By the *Statute of Westminster* I, 1275, the age of fourteen, in the case of a female ward, was increased to sixteen.

On attaining his legal age, the heir had to "sue out his livery," *i.e.*, sue for the delivery of his lands from the custody of the guardian, by the process of *ouster le main* ; this was done by paying half a year's profits. In this case no *relief* or *premier seisin* was paid. Ouster le main.

¹ Sel. Charters, 101. ² Ib. 151. ³ Ib. 297.

Marriage.

Marriage. The lord had power to dispose of a female ward in suitable marriage; if the ward refused the marriage, she forfeited the value of the marriage—*i.e.*, the sum anyone would give for the alliance—to the lord, and, if she married without the lord's consent, she forfeited double the value. *Temp.* Henry III. this right over wards was extended to males.

Escheats.

Escheat. If the heirs of the blood of the tenant failed, or if the tenant committed any crime, such as treason or felony, which was held to corrupt his blood, and to render all his blood incapable of inheriting, the lands '*escheated*' or reverted to the lord.

Lands entailed in a certain way by the statute *de donis conditionalibus*, or Statute of Westminster II., 1285 (*below*), were not subject to forfeiture for treason or felony. When a man was convicted of treason, his lands were forfeited to the Crown, and the immediate lord lost the *escheat*. By Magna Carta, 32, it was provided that the lands of persons convicted of felony should be held by the Crown for a year and a day, and then escheat to the lord.¹ Forfeiture for treason and felony was abolished 1870.

Fines for Alienation.

Fines for alienation, paid to the king by the *tenants in chief*, for the power of alienating land.

Alienation of Land.

Alienation of Land. Up to the Norman Conquest land had been alienable by will; this practice was put a stop to by William I. except in a few cases where the right was specially reserved, *e.g.*, *Gavelkind*. Certain restrictions on alienation gradually grew up, all tenants in chief having to obtain a licence from the king before alienating, on pain of forfeiture, and in the Charter of 1217 we find a distinct limitation on the power of alienating

¹ *Sel. Charters*, 300.

in the thirty-ninth article, which contains the germ of the *Quia Emptores Statute*; by it no one is to "give or sell more from his land than may leave in the residue of his land enough to do the service, which belongs to the lord of the fee."¹ The practice of alienating part of fees or fiefs by *subinfeudation*, Subinfeudation. or subletting portions of the estate to inferior lords, was so extensively carried out, that in 1290 was passed the celebrated Statute of Westminster III., (18 Ed. I.), known as *Quia Emptores*; this Statute Quia Emptores, 1290. forbade *subinfeudation*, and enacted that, in any case of alienation, the land was to be held directly of the superior lord, and not of the intermediate alienor. The effect of this measure was to increase largely the class of small freeholders holding directly from the Crown or the great lords. In the Confirmation of the charters by Edward III., on his accession, 1327, a fine was imposed on alienation, which was, however freely permitted on that condition.

Entail, which is foreshadowed by a law of Alfred, Entail. "The man who has *bochland*, and which his kindred left him, then ordain we that he must not give it from his kindred, if there be writing or witness that it was forbidden by those men who at first acquired it, and by those who gave it to him, that he should do so,"² was established by the Statute of Westminster II. (passed June, 1285), 13 Ed. I., known as the Statute *de donis conditionalibus*. By this Statute "lands given to a man and the heirs of his body, with remainder to other persons, or reversion to the donor, could not be alienated by the possessor for the time being, either from his own issue or from those who were to succeed them."³ *Temp.*

De donis conditionalibus, 1285.

¹ Sel. Charters, 346.

² Ib. 63.

³ Hallam, Const. Hist., i., 12.

Taltarum's Case, 1473. Edward IV., it was held, in *Taltarum's* case, 1473, that an entail could be cut off by *common recovery*, "a fictitious process of law," abolished 1833; and Statute of Fines, 1489. in 1489 was passed *the Statute of Fines* (4 Henry VII., c. 24), founded on a statute of Richard III., giving a power of alienating entailed land; "it enacts," says Mr. Hallam, "that a fine levied with proclamations in a public Court of Justice shall, after five years, except in particular circumstances, be a bar to all claims on lands." This was confirmed 1540, (32 Henry VIII.) By an act of 1534 entailed lands were, in the case of High Treason, declared forfeited to the Crown.

Quo Warranto, 1278. In 1278 was passed the *Statute of Gloucester*, better known by the name *quo warranto*, enacting that the itinerant justices were to enquire by what right the various territorial franchises were held; the primary object of the King was to obtain money from those whose title was bad.

Divisions of Land.
Shire.

Divisions of Land.

1. *The Shire*, (*scir*, a part or share of a whole, e.g., the City of York was divided into seven shires) was originally the sub-kingdom, or, (as in the larger kingdoms), followed the old tribal divisions. It was made up of an aggregation of hundreds, varying greatly in number, (from sixty-five in Sussex, to six in Lancashire); its chief officers were the ealdorman, bishop, and shire reeve (ch. vii.), and its court the *shiremoot* (p. 63). The *scir* is mentioned in the laws of Ine.² The division of the whole country into shires was gradual, and was effected by different hands under different circumstances; to this fact is due the want of uniformity in the divisions. The work could not have been completed until the time of Edgar.

¹ Const. Hist., i., 13. ² Sel. Charters, 61.

2. *The Hundred*, a division answering to the *pagus* of Tacitus, has been defined by Professor Stubbs to be "the union of a number of townships for the purpose of judicial administration, peace, and defence." The term *hundred* originated in, and was almost entirely confined to, the south of England, the divisions of the shires in the north and centre of England, such as Yorkshire, Derbyshire, and Leicestershire being known as *Wapentakes* (*weapon take*), possibly from an old custom of swearing fidelity to a magistrate by touching his arms, or else in mere allusion to a military gathering of the freemen of the district; another derivation is, that persons unable to find sureties for their good behaviour were deprived of their weapons.

The hundred.

Wapentakes.

The origin of the *hundred* is obscure; the five chief theories on the subject are:—

Theories as to the hundred.

1. That it was originally the division of one hundred *hides* of land.

2. That it was a district of one hundred *hides*, each hide furnishing one warrior.

Both these are disproved by the unequal size of the hundreds.

3. That it was the original district held by one hundred families.

4. That it was a district furnishing one hundred warriors. This is to a certain extent borne out by the military meaning of the word *wapentake*, and by the fact that one hundred warriors were furnished by the *pagus* to the host.

5. (The most tenable theory). That it was an association of one hundred persons for purposes of police and justice. The term *hundred* is first found under Edgar,¹ when it denotes an organisation for police purposes, though it had probably

¹ Sel. Charters, 70.

been in existence for some time, as Alfred is said to have adopted the *hundred* as the basis of rating. The term was at any rate first used to denote the *personal* relations of the hundred warriors, or the association of the *hundred* for defence, being applied in course of time to the *district* occupied by them. The chief man of the *hundred* was the *hundreds ealdor* (see *hundred moot*, p. 66).

Lathe.

3. *The Lathe*, (*lething*, a levy), was a term used in Kent to denote a district which included several "*hundreds*." These Kentish *hundreds* were merely geographical divisions, all organisation being vested in the *lathe*, which had a court of its own.

Rape.

Riding.

Rape, (*rope*), in Sussex, and *riding*, (*trithing*, a third part), in Yorkshire, and Lincolnshire, were sub-divisions of land coming between the *shire* and the *hundred* or *wapentake*.

Township.

4. *The Township* (*tun*, an enclosure), the lowest division in the political system, consisted of a number of allodial proprietors banded together by community of interests, and by the position of their estates. The *township*, which took the place of the *mark* (p. 196), although it contained the germ of the boroughs (ch. viii.), must be carefully distinguished from the *town*. The chief officer was the town reeve (*tun gerefa*), usually chosen by the proprietors, though occasionally nominated by the King. In later times the townships consisted of the tenants of a large proprietor, either under the direct control of the lord, or having a kind of self-government dependent on him. In these townships the lord nominated the reeve. These later townships became under the Normans

Manors.

The Manors, which were not altogether a Norman innovation, but grew chiefly out of these Anglo-Saxon townships, where the lord had his

rights of *sac* and *soc* (p. 68). The lord kept part of his manor, the *demesne lands*, for his own use, occupying part of the *demesne* himself, the rest being in the occupation of *villeins* (p. 221), and the remaining portion of the manor being held by freeholders, with the exception of a small portion known as the *waste*, which served for common pasture land. The manors all had special courts (p. 67); they were also called *baronies* and *lordships*. Fresh manors continued to be frequently created by the process of *subinfeudation*, until the practice was stopped by the Statute *Quia Emptores*, 1290 (p. 209.)

Demesne lands.

The Waste.

Subinfeudation.

Sithesocn, a name given to the districts exempt from the local courts, where the jurisdiction was in the hands of the lord (p. 68.)

Sithesocn.

An *Honour*, or greater liberty, was usually an aggregation of manors in the hands of one lord, who could hold one court for all the manors, had criminal and civil jurisdiction, and occasionally had the right of excluding the sheriff's jurisdiction; e.g., the *honours* of Wallingford and Peverell.

Honour.

Hide, a division of land varying from thirty-three acres in pre-Norman times, to one hundred acres in later times (p. 181, note 1.) There is much diversity of opinion as to the extent of the hide at different periods.

Hide.

Carucate, the amount of land that one plough could turn over in a season; it varied much, but at last became fixed at one hundred acres.

Carucate.

Counties Palatine, so called a *palatium*, the King's palace, as the holders of them enjoyed royal rights, subject only to the suzerainty of the King; (there was an officer in the household of the early French Kings called *Comes Palatii*, who enjoyed immense power and authority.)

Counties Palatine.

Counties Palatine had courts of their own, and

their own Parliament for the transaction of local matters (p. 62.)

The Counties Palatine were always counties bordering on an enemy's country, *e.g.*—

Chester. *Chester*, granted to Hugh the Fat, of Avranches, by William I., was united to the Crown *temp.* Henry III., though still retaining its Palatine character, and has ever since given the title of Earl of Chester to the King's eldest son. It was not represented in Parliament until *temp.* Henry VIII. It formed a barrier against the Welsh, together with

Pembrokeshire. *Pembrokeshire*, which remained a County Palatine until 1536 (27 Henry VIII.)

Durham. *Durham*, granted to Bishop Walcher by William I. It remained a County Palatine under a Bishop until 1836, and was not represented in Parliament until 1673. It formed a defence against Scotland together with

Hexhamshire. *Hexhamshire*, which was a County Palatine under the Archbishop of York until 1571, when it was joined to Northumberland.

Lancaster. *Lancaster*, granted as a County Palatine by Edward III. to Henry, Earl of Lancaster (afterwards Duke). It was united to the Crown on the Attainder of Henry VI., who was Duke of Lancaster, and confirmed to it by an Act of Henry VII., "but under a separate guiding and governance from the other inheritances of the Crown."

Kent. *Kent*, granted to Odo of Bayeux as a defence against France. On Odo's fall, it lost its Palatine character.

Ely. *The Isle of Ely*, from Henry I. to 1538, was a royal franchise, held by the Bishop, who exercised *jura regalia*.

Cinque Ports. *Cinque Ports*, were originally the five ports of

Sandwich, Dover, Hythe, Romney, and Hastings, to which were subsequently added the towns of Winchelsea and Rye. The object of the organisation of these ports was the defence of the coast, and each port was bound to provide so many ships, contributing in a great measure to form the English Navy (ch. x.) Sandwich, Romney, and Dover, which are mentioned in Domesday, probably obtained their privileges from Edward the Confessor; Hythe and Hastings were added by William I., who regarded the *Cinque Ports* as highly necessary to secure his free access to France. The *Cinque Ports* have courts of their own, besides many curious privileges (p. 62); they are under a *Lord Warden of the Cinque Ports*, whose office was in former days of the greatest importance. The five original ports each sent two barons to Parliament, one of whom, up to 1689, was nominated by the Lord Warden. The district under the jurisdiction of the Lord Warden was of considerable extent.

Stannaries, (*stannum* tin), are districts in Cornwall and Devonshire containing tinneries, the workers of which were from early times entitled to special privileges, tin having been originally in those counties a prerogative of the King. In 1201, a Charter was granted by John to the tin-workers, and subsequently confirmed on several occasions, e.g., 33 Edward I., and 50 Edward III. Since the grant of the *Stannaries* by Edward III. to the Black Prince, 1337, they have always formed part of the Duchy of Cornwall, and are under a Lord Warden, who has under him two Vice-Wardens, to preside in the *Stannary Courts* (p. 61.)

CHAPTER VII.

THE PEOPLE.

Social Ranks.

A. *Social Ranks.*

Athelings.

The Athelings. The word *Atheling* (*Ethel*) at first denoted any one of noble blood, but with the rise of the *thegns* (p. 200), and the consequent absorption of the *Eorls* (*see below*), the term became restricted in meaning to the kinsmen of the royal house. The *wergild* of an Atheling was usually half that of the King.¹

Eorls.

The Eorls, (to be distinguished from the Danish jarls or earls, who were nobles by service), were the descendants of the primitive nobles, and were *noble by blood*. The King, consequently, could not make a man of ignoble blood an *Eorl*, though, with the growth of thegnhood (p. 201), the possession of forty hides of land rendered a thegn *eorlworthy*.² An *Eorl's wergild* was 1200 shillings, and his oath was equal in weight to those of six ceorls.

Thegns.

The Thegns, originally companions of the King, bound to render military service (thegn=warrior), in contradistinction to the *gesiths*, or mere personal companions, by degrees grew into a powerful class, with great social and political advantages, absorbing and superseding the *Athelings* and *Eorls*; whilst from the time of Athelstan the *gesiths* disappear, being either exalted into *thegns*, or debased to the position of inferior servants.³ A man possessed of five hides of land became a *thegn*, though he could not count nobility of blood until the third generation. The class of *thegns*

¹ Sel. Charters, 65.

² Ib.

³ Stubbs, Const. Hist., i., 156.

comprised men of various degrees of power and wealth, from the *King's thegns*, over whom the King alone had *soken* or jurisdiction,¹ to the possessors of two hides only, who were the *thegns* of some great *hlaford*, (*loaf-giver*), such as a bishop or ealdorman.² The thegn throughout all the period of Anglo-Saxon history is bound to military service, and accompanied the King in war, as well as attended his Council in peace.

The *Ceorls* had no nobility of blood, although they were freemen, could hold property, and enjoyed the protection and privileges of the law. Owing to the barrier of blood, a *ceorl* could never become an *eorl*, though by the acquisition of five hides of land, together with a Church and house, he might attain to thegnhood.³ By degrees, however, both *eorls* and *ceorls* became merged in the *thegns*, and when the law of Athelstan declared that every landless man must have a lord,⁴ an *eorl* without land found himself in a worse position than a *ceorl* with land. Those *ceorls* who did not prosper enough to become *thegns*, sank into a state not far removed from that of *serfs*, the only difference being that a *ceorl*, although landless, was still free, and might commend himself to what lord he pleased, whilst by the acquisition of property he could rise to a higher position. A *ceorl's wer-gild* was 200 shillings.

The *Thralls*, *Theows*, or *Slaves* were of two kinds—

¹ Sel. Charters, 73. Laws of Ethelred, cap. 11.

² "The name of thegn covers the whole class, which, after the Conquest, appears under the name of knights, with the same qualification in land and nearly the same obligations.—STUBBS, Const. Hist. i., 156.

³ Laws of Edward. Sel. Charters, 65.

⁴ Sel. Charters, 66.

Wealh. (a) *Hereditary Slaves*, i.e., the descendants of the old Britons. These were called *wealh*, and were found in the greatest numbers in the western districts.

Wite Theows. (b) *Wite Theows*, reduced to servitude for crime, neglect to pay a fine, or voluntary sale.

The slaves were the absolute property of their master, and were regarded as his chattels; they were usually sold with the land.

Læts. The *Læts* of Kent, with their wergilds of forty, sixty, or eighty shillings, were in a better position than the *theows*, being cultivators of land, which, however, did not belong to them.

Social Ranks after the Norman Conquest. *Social Ranks after the Norman Conquest.*
 Relations of the Baronage to the Crown. *Relations of the Baronage to the Crown up to Henry III.*

Both tenants *in capite* by knight service (p. 203), and tenants *in capite* by grand serjeanty (p. 204), were as Lords of Manors entitled to be called barons, but those only who held by grand serjeanty were the *King's barons* holding *per baroniam*. The former class were the lesser barons, who gradually sank into the position of knights and squires (*see House of Lords*, pp. 119, sq.)

Up to 1295 the Baronage played a very important part in English history, being continually in opposition to the Crown.

1075. In 1075 the struggle began with the insurrection of Ralph Guader, Earl of Norfolk, and Roger of Breteuil, Earl of Hereford. William, by a sudden return from Normandy, crushed the conspiracy.

1088. In 1088 a number of the barons headed by Odo of Bayeux, Roger Montgomery, Earl of Shrewsbury, and Robert Mowbray, Earl of Northumberland, espousing the cause of Robert of Normandy, rose against William Rufus. The King obtained

the support of the English people, who hated the feudal nobles, and the rebellion was crushed.

In 1095 Robert Mowbray, Earl of Northumberland, and other great barons, rose in favour of Stephen of Aumâle. William was again victorious.

In 1102 Robert of Belesme, Earl of Shrewsbury, attempted an insurrection, but was compelled to quit England.

The effect of these insurrections, which showed the wisdom of William I.'s anti-feudal policy (p. 202), was to draw the Crown and the people closely together, and to cause Henry I. to endeavour to strengthen his own party by the creation of new barons.¹

Although under the strong government of Henry the Crown was triumphant, the Barons during the anarchy of Stephen's reign assumed the position of petty kings, each one fighting for his own advantage; under the reforming hand of Henry II., the power of the Crown was speedily re-asserted, the "adulterine," or unlicensed, castles of the barons were razed, and the "fiscal" earldoms, (so called as the King, having no lands to bestow, had to support them by grants of money²), created by Stephen were taken away.³ Henry further curbed the power of the Baronage by giving the offices of state to able men who were not great feudal nobles, whilst the introduction of *scutage* (p. 189), still further checked their power by rendering the King independent of their services in the field. In 1173 a civil war broke out in Normandy and England, in which many of the barons supported Henry's sons, Henry, Richard, and Geoffrey, but the King's party was victorious.

From this time the character of the Baronage

¹ Sel. Charters, 92, 97 (Ord. Vit Eccl. Hist., xi., 2).

² Ib. 116. *Wm. Malm.*, i. 18. ³ Ib. 118. *Matt. Paris*, p. 86.

Alliance of the
Crown and the
People.

Position of the
Baronage, *temp*
Stephen.

Henry II.'s
Policy.

"Adulterine"
castles.

"Fiscal"
Earldoms.

Civil War,
1173.

Change in the
character of the
Baronage.

Alliance of the
Baronage and
the People,
temp. John.

Henry III.

Provisions of
Oxford, 1258.

changes; the old Norman nobility was dying out, and was being superseded by the *novi homines*, raised to power by the anti-feudal policy of Henry II. As a result, the Baronage under the misgovernment of John, caring little for the loss of Normandy, refused to follow the King abroad, and was not only hostile to the Crown, but closely allied with the people, in whose interests, as much as in the interest of the nobles, the Articles of the Barons were presented to the King in Jan., 1215; whilst in the 60th clause of the *Great Charter*, wrung from John by the action of the barons, it is provided that all the aforesaid customs and liberties which have been granted *are to apply to every one*.¹ John's subsequent attempts to evade the Charter led the barons to offer the Crown to Prince Lewis of France. The opportune death of John, and the tact of the Earl of Pembroke, brought the barons for a time back to their allegiance, but the subsequent misgovernment of Henry III. made the latter half of his reign one long struggle between the Crown and the Baronial party, headed by Simon de Montfort; attempts were made to check the mis-rule of the King by appointing his ministers in Parliament, 1244, 1258 (p. 35), but to no effect; and in June, 1258, the barons presented their famous Petition of 29 Articles, at the Parliament of Oxford,² detailing their grievances; the King assented to the scheme of government proposed (p. 16), and in October, 1258, the *Provisions of Oxford*³ were drawn up, followed in the next year by the *Provisions of Westminster*.⁴ (*Appendix A.*) After the death of Simon de Montfort, 1265, the Baronial party was won over to inactivity by partial concessions, and the remainder of the reign was comparatively untroubled. *See House of Lords* (pp. 119, sq.)

¹ *Sel. Charters*, 304. ² *Ib.* 382. ³ *Ib.* 387. ⁴ *Ib.* 401.

Livery and Maintenance became, in the later history of the Baronage, great abuses. Livery and Maintenance.

Livery at first meant the whole of the allowance given by a lord to his servants. Livery. Subsequently the term was restricted to the clothes given as a badge of dependence or servitude, and it became the practice to grant livery to any one who asked for it; livery thus worn entitled the wearer to the protection of the lord, and had the effect of encouraging rioting and lawlessness, no one daring to take action against an offender, who wore the livery of a great lord. The granting of liveries was checked by Statute in 1377 (1 Ric. II.), 1393 (16 Ric. II.), 1400 (2 Hen. IV.), 1411 (13 Hen. IV.), 1468 (8 Edw. IV.), and 1488 (3 Hen. VII.). By a Statute of 1504 (19 Hen. VII.), cases of giving or receiving livery were to be tried by the Star Chamber, or King's Bench; Henry VII. imposed heavy fines for livery, *e.g.*, Earl of Oxford, £15,000.

Maintenance, or the maintaining and assisting one of the parties in a suit in which maintenance was no concern, was liable to great abuse, as persons desirous of bringing suits against any one usually obtained the assistance of some wealthy and powerful lord, and were thus enabled to bring actions, whether false or not, with impunity. Maintenance. Maintenance was checked by the Statute of Westminster I., 1275 (3 Edw. I.), and in 1327 (1 Edw. III.), 1390 (13 Ric. II.), 1540 and 1546 (38 Hen. VIII.). It was to check these two evils that the judicial authority of the Star Chamber (p. 48) was revised *temp.* Henry VII.

Villeins. By the time of the Norman Conquest the *ceorls* (p. 217), who had failed to prosper enough to become thegns, had sunk to a condition in which they were fast losing their independence. In Villeins.

Villani, Bordarii,
Cotarii.

Domesday survey there appear three classes of labourers, or serfs, *villani*, *bordarii*, and *cotarii*, the two latter being merely lower grades of the *villani*; these *villani* were depressed *ceorls*. At first their position under the Normans was by no means without its advantages; they had certain rights and privileges, were often comfortably off, and had many methods of obtaining their freedom, *e.g.*, by residing in a town for a year and a day¹; they were often given their freedom by their lords at the request of the Clergy, though the Constitutions of Clarendon provide that the sons of *villeins* shall not be ordained without the consent of their lord. Their position, however, deteriorated for a time, and then suddenly began to improve, owing to:—

Improvement in
the position of
Villeins.

1. *The tendency to limit the service* vowed by *villeins* to their lords—and which was not defined by law—to a *fixed labour rent*; when their work was finished, they hired themselves out as labourers to the farmers who held land on lease, and so occupied the position of hired labourers.

2. *The influence of the Church.*

3. *War.* Many *villeins* became soldiers in a temporary war, and, being unwilling to revert to their former life, subsequently fled to the towns.

Copyholders.

By degrees the lords began to commute the agricultural services of their *villeins* for money payments, and the better class of *villeins* became *copyholders*, *i.e.*, held their land on certain conditions of rent or service imposed by the will of the lord and the *custom of the manor*, and entered on the copies of the court roll of the manor, which alone afforded evidence of the tenure. Thus at the

¹ *Customs of Newcastle*, Sel. Charters, 112. *Charter of Lincoln*, Ib., 166. *Charter of Nottingham*, Ib., 166. *Extracts from Glanvill*, Ib., 161.

time of the Black Death, 1348, the condition of the *villeins* was good; the scarcity of labourers caused by the pestilence, and the miserable wages decreed by the *Ordinance* and *Statute of Labourers*, 1349 and 1351, soon deteriorated the condition of the *free* labourers. The lords made every effort to assert their ancient rights over their *villeins*, and to again reduce the free labourers to servitude. The result was the rebellion of Wat Tyler in 1381, in which the *villeins* attempted to destroy the court rolls containing the records of their villenage. From this attack the system of villenage never recovered, and it gradually died out, the last attempts to assert it being the cases of *Butler v. Crouch*, 1568, and *Pigg v. Caley* 1617. (See *Appendix B.*)

Statutes of
Labourers,
1349, 1351.

Rebellion of
1381.

Butler v. Crouch,
1568.
Pigg v. Caley,
1617.

There were two kinds of *villeins*, the *villein regardant*, bound to the manor and the soil, and the *villein in gross*, bound to the person of the lord, and transferable by deed from one lord to another.

Villeins
regardant.

Villeins in gross.

The Poor Laws.

The Poor Laws.

In Anglo-Saxon and Norman times the relief of the poor was the business of the Church, and was regarded as a duty to be rigidly fulfilled. A law of Ethelred declares that the poor are to have a third of the tithes, and up to the time of Edward II., almsgiving remained the special province of the Clergy. After the decimation of England by the Black Death in 1348, it was found necessary to pass in 1349 an Ordinance (23 Edward III.) regulating the wages to be paid to labourers, and making it illegal to relieve an able-bodied pauper, whilst all able-bodied paupers were compelled to work under pain of heavy penalties.

Labour
Ordinance, 1349.

In 1351 was enacted the famous *Statute of*

Statute of
Labourers,
1351.

Various Poor
Laws, 1388.

1495, 1504.

1531

1536.

1547, 1549, 1555,
1563.

Poor Law, 1601.

Labourers, confirming and adding to these provisions, and in 1388 (12 Richard II.) it was provided that paupers were to remain in the place of their birth, whilst authorised begging under license was permitted. By Acts of 1495 and 1504, impotent and infirm paupers were to be sent to the place of their birth, and to beg under license within a certain district.

In 1531 (22 Henry VIII.) licensed begging was permitted, but unlicensed beggars were subjected to severe punishments especially "sailors pretending shipwreck, and fortune tellers." Early in 1536 (27 Henry VIII.) a regular system of relief was established for the needy, whilst vagabonds and sturdy beggars were to be whipped for the first offence, to lose an ear for the second, and to be hanged for the third. Fresh regulations were made in 1547, 1549, 1555, 1563 (5 Elizabeth), and in 1572 (14 Elizabeth) sturdy beggars were ordered to have their ears bored by a hot iron; they were again subjected to severe punishments by a Statute of 1597. In 1601 (43 Elizabeth) an Act was passed which began the system of Poor Laws at present in vogue; by this Act a rate was imposed on the landed property of each parish by overseers of the poor; the money was to be applied to the relief of the infirm poor, and was to be used also to provide work for able-bodied paupers. No means were, however, provided for the uniform enforcement of this Act, and it was consequently carried out differently in various places; the result being that the able-bodied paupers repaired to the parishes which had the best organisation. This was checked in 1662 (13 and 14 Car. II.), when it was provided that any pauper settling in a place might (within forty days), on the complaint of the Overseers, and

by the order of two Justices of the Peace, be sent back to the parish where he was born, or had been last settled. This settlement of paupers in their own parishes was further regulated 1685, 1691 and 1697. In 1723 (9 Geo. I.) workhouses were established for the reception of the poor, and in 1782 the *Davies Gilbert Act* provided for the appointment of Guardians of the Poor, for the union of various parishes for the relief of paupers, and for the better administration of the Poor Law, where such action was considered desirable by two-thirds of the owners and occupiers assessed to the Poor Rate. In 1819, by the *Select Vestry Act*, the vestry of a parish might appoint a select vestry of householders to superintend the action of the Overseers. In most parishes, however, the Poor Law continued to be shamefully administered by the Overseers, the Gilbert and Select Vestry Acts not being compulsory, and, says Sir T. Erskine May, "In a period of fifty years the poor rates were quadrupled, and had reached, in 1833, the enormous amount of £8,600,000.¹" In 1834, in consequence of the report of a Commission of Inquiry, the *Poor Law Amendment Act* was passed (4 and 5 Wm. IV.), by which *Poor Law Commissioners* were appointed for five years (the period being subsequently extended to 1847); all relief was to be given in the workhouse, instead of being, as before, administered to "out of door" applicants, whilst the system of union workhouses was established. In 1847 a *Poor Law Board*, consisting of the Lord President of the Council, the Lord Privy Seal, the Home Secretary, and the Chancellor of the Exchequer, together with certain other Commissioners appointed by the Crown, took the place of the *Poor Law Commis-*

Paupers to be sent to their own parishes.

Davies Gilbert's Act, 1782.

Select Vestry Act, 1819.

Poor Law Amendment Act, 1834.

Poor Law Commissioners.

Poor Law Board, 1847.

¹ Const. Hist., iii., 406.

sioners. In 1871 the duties of the *Poor Law Board* were transferred to the *Local Government Board*. (p. 44.)

Merchants.

Merchants. By a law of Edward the Elder, it was provided that "if a merchant throve, so that he fared thrice over the wide sea by his own means, then was he thenceforth of thegnright worthy."¹ Subsequently foreign merchants received considerable encouragement, laws being made for their protection by Ethelbert; in Magna Carta, (clause 41), it was provided that "all merchants shall have safe conduct to depart from or enter England, to stay in and go through England, either by land or water, to buy or sell without any evil tolls, according to old and right customs, except in times of war; in case of war foreign merchants are to be detained safely until it is seen how the English merchants in the enemy's country are treated."² A Charter of Henry III. granted considerable privileges to the German merchants of the Steel Yard in England, and was confirmed 1413 and 1504. In 1283 was passed the *Statute of Merchants* (11 Edw. I.), at Acton Burnell, in which provisions were made for the recovery of their debts; this was confirmed in 1285, and ordered to be observed by the Ordinances of 1311. In 1297 another Statute was passed in favour of Foreign Merchants, from whom Edward I. frequently obtained customs and grants of money without the consent of Parliament (p. 191), granting in return charters of privileges, e.g., the *Carta Mercatoria*, 1303. (See *Customs*, p. 184.)

Statute of
Merchants,
1283.

Confirmed, 1285.
1311.

Carta
Mercatoria,
1303.

Edward III. occasionally summoned representatives of the merchants to aid him in his financial difficulties, and in his reign the *Merchants of the Staple*.

¹ Sel. Charters, 65.

² Ib. 301.

Staple, (trading chiefly with Flanders in wool, woollens, leather, tin, and lead, called “staple commodities”), who had existed under Edward I., and increased under Edward II., reached the zenith of their power. Certain towns, *e.g.*, Bristol, Caermarthen, Canterbury, Chichester, Cork, Dublin, Drogheda, Exeter, Lincoln, London, Newcastle, Norwich, Waterford, and York were named as “staple towns,” and all “staple commodities” were sent there, for exportation by the foreign merchants to the foreign staple towns, such as Antwerp or Calais. In 1328 the *Staple* was done away with, but shortly afterwards re-imposed. In 1353 (27 Edw. III.) the *Staple* was regulated, and the privileges of the *Staple Merchants*, who had their own officers and laws, were confirmed. Heavy penalties were attached to the offence of selling staple commodities in any but staple towns, and no one except *Merchants of the Staple* were allowed to buy or sell them. In 1369 the *Staple* was removed from Calais, owing to the war with France, but in 1423, another statute made Calais the only foreign staple town. The *Staple* was subsequently regulated in 1392 and 1437. In 1496 a commercial treaty, made by Henry VII. with the Netherlands, gave a great impulse to English commerce, and *temp.* Henry VIII. the English merchants began to assert their power; *temp.* Edward VI. the privileges of the German steel yard merchants were taken away (1552), and the Steel Yard itself ceased to exist 1597, whilst the English *Merchant Adventurers*, incorporated 1564, (who had existed from 1296 as the *Brotherhood of St. Thomas à Becket*,) secured most of the Dutch trade.

Staple
Commodities.

Staple Towns.

Statute of the
Staples, 1353.

Merchant
Adventurers,
incorporated,
1564.

Brotherhood of
Thomas à
Becket.

In 1599 was formed the *East India Company*,

East India
Company, 1599.

Sir William
Courteen's
Company.

New Company,
1698.

Amalgamation of
the two
Companies, 1702.

Fox's India Bill,
1783.

Pitt's India Bill,
1784.

Aliens.

Alien Tax.

which was incorporated by Royal Charter, Dec., 1600. The Company thus started obtained further powers of settlement in 1624, and in 1649 amalgamated with a company which had been formed in 1635 by Sir William Courteen. In 1657 Cromwell granted a new charter, which was again renewed by Charles II., 1661, the administrative powers being largely increased. In 1667 the company obtained the right of coinage, and in 1683 the right of employing Martial Law. In 1693 a new charter was granted, and in 1698 a new Company, with immense powers, was incorporated, consisting of certain persons who had subscribed a loan of two millions to the Government. In 1702 the two rival companies were united, and their privileges confirmed, 1708. The wealth and power of the Company increased rapidly, but its administration of India was a source of great complaint, and in 1783 Mr. Fox brought in his *India Bill*, vesting the powers of administration in a body of seven Commissioners, appointed, in the first instance, by Parliament, and subsequently by the Crown; the measure failed, and another *India Bill*, brought in by Mr. Pitt in the following year, became law; by it a Parliamentary Board of Control was appointed, to whom the Company was responsible (24 Geo. III.). In 1833 all trading privileges were abolished (3 and 4 Wm. IV.), and in 1853 the Board of Directors was re-organised, and reduced to eighteen. The whole Government of India was subsequently transferred to the Crown, 1858.

Aliens were in former times regarded in England with peculiar jealousy, *e.g.*, in 1258, 1404, 1571 and 1575, they were expelled from the realm; they were subject to higher rates of taxation, and the "alien tax" was often imposed, *e.g.*, 1439, 1442, 1453,

1483, 1495, though by *Magna Carta* foreign merchants were allowed to come to England for the purposes of commerce without being subject to any evil tolls (p. 226). Aliens were frequently subjected to repressive legislation. In 1380 they were forbidden to hold benefices; in 1414 to hold land or engage in retail trade; in 1484, 1523 and 1530, to have apprentices; and in 1540 to take any shop or dwelling-place on lease. An alien may become a British subject by *denization*, e.g., by letters patent issued by virtue of the King's prerogative, or by *naturalisation*, e.g., by Act of Parliament, or by a certificate from the Home Secretary, on taking the oath of allegiance (in accordance with the *Naturalisation Act* of 1870). In 1610 (7 Jac. I., c. 2), the conditions of naturalisation embraced receiving the sacrament, and taking the oaths of supremacy and allegiance; the necessity of taking the sacrament was abolished 1825. In 1608 it was decided by *Calvin's case* (Appendix B.) that those born after the union of England and Scotland under one King, (*postnati*), were not aliens. By the *Act of Settlement*, 1701, owing to the jealousy with which the foreign favourites of William III. were regarded, it was enacted that no alien, even though naturalised or a denizen—unless born of English parents—shall be capable of sitting in Parliament, or holding any office or place of trust, or have any grant of land from the Crown. Although this enactment was sometimes relaxed by special Acts of Parliament in favour of particular individuals, it was confirmed on several occasions, e.g., 1740, 1749. In 1774 it was provided that no bill for naturalisation should pass, unless it contained a clause deferring the immunities and indulgences of natural-born subjects until after seven years' residence. In 1793, in conse-

Legislation
against aliens.

Denization.

Naturalisation.

Calvin's Case,
1608.

The Postnati.

Act of
Settlement,
1701.

Alien Act, 1793.

Hutt's Act.
1844.

Naturalisation
Act, 1870.

Outlaws.

quence of the alarm existing at the influx of large numbers of French refugees, the *Alien Act* was passed, subjecting them to most strict regulations; it was subsequently re-enacted as occasion demanded until 1826. In 1827 and 1836 measures were adopted for the registration of aliens; in 1844 Mr. Hutt's Act increased the facilities for naturalisation, and extended the consequent privileges. *By the Naturalisation Act of 1870* an alien may acquire, hold, and dispose of real and personal property, with the exception of British ships, like a natural-born subject, and has all the rights and privileges of a British-born subject, except the franchise, and the power of holding municipal or parliamentary office. An alien, by obtaining a certificate of naturalisation from the Secretary of State, acquires all political as well as all civil rights (*see Allegiance*, p. 30.)

Outlaws were persons put beyond the pale of the law, by three public proclamations, for committing felony. In early days an outlaw might be killed by any one who met him, as he was regarded as a wild beast, and was said to have *caput lupinum*, a "wolf's head." By the Assize of Clarendon,¹ Art. 14, men judged to be of evil repute by the testimony of lawful men are to leave the country, and, if they return without the King's pardon, to be outlaws. *Temp.* Edward III., however, it was provided that outlaws should not be put to death, except by the sheriff; anyone killing an outlaw wilfully, except when endeavouring to apprehend him, being guilty of murder. At first outlawry was only applied to felony, but subsequently was used in civil cases where the defendant absconded; in a case of outlawry, forfeiture of goods and lands followed. Statutes regulating outlawry were passed

¹ Sel. Charters, 145.

1331 (5 Edw. III.), 1363 (37 Edw. III.), 1406 (7 Hen. IV.), 1532 (23 Hen. VIII.), and 1589 (31 Eliz.).

The Jews came into England as early as the VIIth. Century, and were, from the very earliest times, regarded with hatred by the people. They were in the position of the chattels of the King, who exacted large sums of money from them as the price of his nominal protection, which, however, rarely sufficed to shield them from persecution. By the Assize of Arms, 1181, no Jew could keep a breastplate or hauberk in his own possession.¹ Massacres of the Jews at this time were frequent in different towns, where they inhabited certain quarters known as *Jewries*; (to many towns, however, e.g., Newcastle and Derby, it was granted, as a special privilege, that no Jew should dwell there). Such massacres took place in London 1189, York 1190. Henry II. extorted large sums from the Jews, and *temp.* Richard I., it was provided that all the debts, securities, lands, houses, rents, and possessions of the Jews should be registered.² The Jews were subjected to great persecutions by John, whilst the *Articles of the Barons*, and *Magna Carta*, both contain provisions putting checks on their system of usury.³ Under Henry III. they were even worse off than before; in 1239, Henry seized one-third of all their goods, and extorted large sums of money from them in 1241, 1243, 1250, and 1255. In the latter year eighteen Jews were hanged together at Lincoln, and in 1264 several others were executed in London, the usual charges made against them being murder, and clipping the coin. The exactions were continued under Edward I., who at last, (after a severe statute had been passed

The Jews.

Are the King's Chattels.

Oppression of the Jews, temp. Henry III.

¹ Sel. Charters, 155.

² Ib. 262.

³ Ib. 293, 298.

Jews expelled
from England,
1290.

Return, *temp.*
Cromwell.

Jews obtain the
Franchise, 1833.

Jewish Relief
Act, 1858.

Liberty of the
Subject.
Law of Ini.

Of Ethelred.

Magna Carta.

against their practice of usury, 1275), in response to the feeling of the nation, banished all the Jews from England, 1290. The Jews were not tolerated in England again until the time of Cromwell, and for many years after that they were under great disadvantages. In 1702 an Act (1 Anne, c. 24), was passed compelling them to provide for their Protestant children. In 1753, they were allowed to become naturalised, without taking the sacrament, but this concession was taken away 1754, in deference to the national feeling, and up to 1833 a Jew had no political rights at all, and "could not hold any office, civil, military, or corporate." In that year, however, they obtained the franchise, and in 1845 were admitted to municipal offices. In 1847, Baron Rothschild was returned to Parliament, but was not allowed to take his seat, as he omitted certain words in the oath as not binding on his conscience. Various attempts were made to secure the admission of the Jews to Parliament, but the *Jewish Relief Act* was not passed until 1858.

Liberty of the Subject was a principal existing from the earliest times, e.g., the law of Ini: "If any one sell his own countryman, bond or free, though he be guilty, over the sea, let him pay for him according to his *wer*¹;" and by the laws of Ethelred² and the statutes of William I.³ no one was to be sold out of the country. It was expressly declared by Magna Carta (Clause 39) *That no freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or exiled, or in any way injured, nor will we go against him, or send force against him, except by the lawful judgment of his equals or the law of the land*; (40) *To no one will we sell, deny, or delay, right or justice.*⁴

¹ Sel. Charters, 61. ² Ib. 73. ³ Ib. 84. ⁴ Ib. 301.

The great Charter of Liberties was subsequently confirmed on many occasions during the reigns of Henry III., Edward I., Edward II., and no less than thirteen times by Edward III.

There were also four Writs by which the Liberty of the subject was specially protected—

1. The Writ *de odio et atia*, formerly sent to the Sheriff directing him to enquire whether a prisoner, charged with murder, was committed upon reasonable suspicion, or only through malice (*propter odium et atiam*); and ordering bail, if the committal had been through ill-will. By *Magna Carta* (36), it was provided that this writ, there called 'the writ of inquest of life or limb,' should be given gratis and not denied.¹ The application of the writ was restricted by the Statute of Gloucester 1278 (6 Edw. I.), but it was again to be granted without denial by the Statute of Westminster II., 1285 (13 Edw. I.) It was abolished in 1354 (28 Edw. III.), "but," says Blackstone, "as the Statute, 42 Edw. III., repealed all the Statutes then in being contrary to the Great Charter, Sir Edward Coke is of opinion that the writ *de odio et atia* was thereby revived."

2. *Writ of Main-prize*, sent to the Sheriff directing him to take sureties for the prisoner. Main-prize.

3. *Writ de homine replegiando*, a writ to 're-pledge' or deliver a man from custody, on bail being given to the Sheriff for his subsequent appearance. De homine replegiando.

4. *Writ of Habeas Corpus*, of which there are several kinds, the most important being the *habeas corpus ad subjiciendum* existing at common law; a writ which might be demanded from the Court of King's Bench by any one imprisoned, and which directed the gaoler "to produce the body of the

¹ Sel. Charters, 301.

prisoner, with the day and cause of his caption and detention, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall direct."

Writ refused by
Coke, 1616.

Although the writ of *habeas corpus* could not be denied (except the prisoner admitted just cause of detention, *e.g.*, in 1616 Sir Edward Coke denied the writ to a man imprisoned for piracy, who admitted his guilt), there was frequently a delay in its execution, as the gaoler need not bring up the body until a third writ had been issued (*pluries*).

¹/₂ Darnel's Case,
1627.

In 1627, *Sir Thomas Darnel*, Sir Walter Earl, Sir John Corbet, Sir Edward Hampden, and Sir Thomas Heveningham were imprisoned for refusing to contribute to a loan demanded by Charles I. They sued out their writs of *habeas corpus*; and the gaoler having stated that they were confined *per speciale mandatum regis*, the judges held that the cause of detention was sufficient. This decision, being contrary to Magna Carta, and to a Statute of 1354 (28 Edw. III.), roused both the indignation and fear of the country, and led to the *Petition of Right*, 1628, which asserted that in violation of Magna Carta, and 28 Edward III. (that "no man should be imprisoned, or put to death, without being brought to answer by due process of law"), certain of the King's subjects had been detained by the King's special command alone, and prayed that no such imprisonment should for the future be allowed (*Appendix A.*) Nevertheless, in 1629, Sir John Eliot, Mr. Selden, and others were imprisoned *per speciale mandatum regis*.

Petition of Right,
1628.

In 1641 (16 Car. I.) it was provided that every one, committed by the Privy Council, might claim a writ of *Habeas Corpus* to show the cause of his detention.

Under Charles II. illegal commitments again became frequent, (*e.g.*; Lord Clarendon imprisoned several political prisoners in places where the writ did not run), and various Bills were proposed to remedy the evil, but failed to pass.

In 1676 occurred *Jenkes' Case*, in which Jenkes, ^{Jenkes' Case, 1676.} who had been committed by the King in Council, only obtained a writ of *Habeas Corpus* after great delay and difficulties, *e.g.*, the Lord Chancellor refused it in vacation.

This led three years later to the famous *Habeas Corpus Act*, ^{Habeas Corpus Act, 1679.} 1679, passed, chiefly at the instance of Lord Shaftesbury, for "the better securing the liberty of the subject, and for prevention of imprisonment beyond the seas," which defined the method of obtaining the writ. By it a *Habeas Corpus* may be claimed from the Chancellor, or any judge, in term or vacation, by any prisoner, except one committed for treason or felony; the writ is to run in special jurisdictions (such as the Channel Islands and Cinque Ports) (p. 215), and, within twenty days at most after its issue, the body of the prisoner must be brought up. Imprisonment beyond the seas was also forbidden (*see Appendix A.*)

In 1689, the *Bill of Rights* ^{Bill of Rights, 1689.} remedied a defect in the *Habeas Corpus Act* by forbidding excessive bail. In 1816 (56 George III.) the privilege of *Habeas Corpus* was extended to cases of detention for civil as well as criminal causes (this extension had been tried for, 1758), and the power of the judges as to enquiry into the case was also increased.

* In 1862 (25 Vic.) it was provided that the writ was not to run in any Colony where the Crown has "a lawfully established Court of Justice." It has occasionally in times of rebellion and disturbance

Suspension of
the Habeas
Corpus Act.

been found necessary to suspend the *Habeas Corpus Act*, e.g., in Great Britain 1689, 1714, 1722, 1745, 1795, 1817, and frequently since then in Ireland.

Impressment. See Chap. x.

General
Warrants.

General Warrants, i.e., warrants issued without names against persons guilty of a particular offence, whereby persons were arrested "*without previous evidence of their guilt or identification of their persons*,"¹ were highly prejudicial to the liberty of the subject. They were often used *temp.* Charles II., and were issued by the Secretary of State. They

Declared illegal,
1766.

were declared illegal by the House of Commons, 1766, in the case of *Wilkes*; a general warrant having been issued by Lord Halifax against the authors, printers, and publishers of the *North Briton*, No. 45. In the actions arising out of this warrant, *Wilkes v. Wood*, *Leach v. Money*, *Entick v. Carrington* (*Appendix B.*), the illegality of the general warrant, which *Wilkes* had styled, "a ridiculous warrant against the whole English nation," was expressly declared. See *Libel*, below.

Liberty of
Opinion.
Censorship of
the Press.

Liberty of Opinion.

The Censorship of the Press was an immediate consequence of the development of printing. At first vested in ecclesiastical hands, it passed, at the time of the Reformation, to the State, and was regulated by the Star Chamber. Under Mary the number of printers was limited, and the *imprimatur* of a Licensor was required by Proclamation, 1559. In 1585 stringent regulations were issued by the Star Chamber; all works were to bear the *imprimatur* of the Archbishop of Canterbury, or the Bishop of London, or, in the case of law works, of the Chief Justices. No printing was to be done, except at Oxford, Cambridge, and London; all presses were

Temp. Mary.

¹ May, *Const. Hist.*, iii. 2.

to be registered, and the number of master printers was limited. Under the first two Stuarts the censorship continued to be most rigorously enforced, and was chiefly directed against the Puritans. In 1637, Bastwick, Burton, and Prynne suffered imprisonment, fine, and mutilation, for seditious writings, the latter having already been imprisoned for four years for publishing his *Histriomastix*, 1633. Prynne's *Histriomastix*, 1633. On the commencement of the Civil War, the Long Parliament endeavoured to carry on the policy of the Star Chamber, by suppressing the many political pamphlets which appeared, most of which exposed the cause of the Royalists. In 1644 appeared Milton's *Areopagitica* in defence of unlicensed printing, but Committees were nevertheless appointed to regulate this censorship, 1654—1656. Milton's *Areopagitica*, 1644. In 1662 (13 and 14 Car. II.) the *Licensing Act* (passed for three years and renewed at intervals until 1679) forbade any printing to be done, except at the Universities of London and York, appointed licensers, and limited the number of master printers to 20. Licensing Act, 1662. In 1680, after the expiration of the *Licensing Act*, all news printed without license was, by a decision of Chief Justice Scroggs, declared to be illegally published, and in 1685 the *Licensing Act* was again passed for 1685. seven years. Subsequently it was renewed for two years in 1692, but in 1695 the Commons refused to re-enact it, and from that time the press was, in theory, free from control, though, in reality, it was still subject to great restrictions by the strained interpretation of the *Law of Libel*, whilst the stamp duty, first imposed 1712 and not abolished until 1855, also had the effect of limiting the circulation of publications. Theoretical freedom of the Press, 1695. Stamp Duty, 1712—1855.

✓ *Law of Libel.* Cases of libel had formerly been dealt with by the Star Chamber (p. 48), and the reigns Law of Libel.

of Elizabeth and the first two Stuarts exhibit many instances of its action against libellers, *e.g.*, 1593, Mr. Penry was executed for a libel on the Queen, and as the suspected author of the libels on the bishops, written by *Martin Marprelate*; in the same year Barrow, and Greenwood were executed for seditious libels; in 1637 Burton, Bastwick, and Prynne (p. 237), were punished for the same offence. "The law of libel," says Mr. Hallam, "has always been indefinite."¹ The Seven Bishops, in 1688, were tried for a seditious libel, (in having presented a petition to James II. against the *Declaration of Indulgence*), and acquitted, the jury claiming their right to return a *general verdict* of guilty or not guilty. In *Tutchin's case* it was held that it is a libel to express any *ill* opinion of the Government, though Chief Justice Scroggs, in *Carr's case*, 1680, had declared that "no man has a right to say *anything* of the Government," whether in praise or blame. Under William III. and Anne, prosecutions for libel were frequent, and in *Franklin's case*, 1731, it was established that the truth of a libel is no defence; as a libel, if true, is equally or even more likely to lead to a breach of the peace, in which the criminality of libel lies. In 1764 it was held by Lord Mansfield, in the case of the printers of the North Briton, No. 45, that the jury *had only to determine the fact of publication*, it being the judge's business to decide whether the matter was libellous. This doctrine was upheld in the case of Almon, 1769, for selling the letters of Junius; in this case it was also held that a *publisher is liable for the publication of a libel by his servants*.

By *Mr. Fox's Libel Act*, 1792 (32 Geo. III.), the

¹ Const. Hist., iii., 167.

right of juries to return a general verdict on the whole matter in cases of libel was established. In

General
Verdicts.

1819 severe measures were enjoined against persons publishing blasphemous or seditious libels, owing to the serious amount of political agitation in the country. In 1839, in the case of *Stockdale v. Hansard*, it was held that the House of Commons could not authorise the publication of libellous matter (p. 117.) In 1843, *Lord Campbell's Libel Act* was passed, by which the character of the law of libel was entirely altered; it was enacted that *the truth of a libel and its publication for the public benefit* should be a good defence, whilst a publisher is no longer liable for acts of his servants committed without his knowledge. In 1868 in the case of *Wason v. Walter* (*Appendix B.*), it was held that no action for libel could be brought against a paper for publishing a hostile criticism.

Stockdale v.
Hansard, 1839.

Lord Campbell's
Libel Act, 1843.

Wason v.
Walter, 1868.

The Right of Presenting Petitions, both to the King and Parliament, had always rested with the people, but was little employed, except for private matters, until the time of Charles I. After the Restoration an Act was passed 1661 (13 Car. II.) forbidding tumultuous petitioning, and providing that petitions, before being presented, must be approved by three justices, or by the Grand Jury of the county; no petition was to be presented by more than ten persons.

Petitioning.

Act against
tumultuous
petitioning, 1661.

In 1679 the custom of petitioning the King to assemble Parliament was forbidden by Proclamation, though the right of the subject to petition the King in a legitimate manner was expressly recognised by the *Bill of Rights*, (v. *Petitioners and Abhorers* p. 142); in 1701 some of the *Kentish petitioners* were imprisoned by the Commons for breach of privilege (p. 116.) The system of petition-

Kentish
Petitions.

ing did not become at all general until the reign of George III.; at that time, however, petitions began to be presented on all kinds of subjects, and in some cases had considerable influence on legislation. Petitions, under the auspices of *Lord George Gordon*, were extensively signed against the Roman Catholics, and their presentation was the signal for dangerous riots. In 1782 petitions for Parliamentary reform began (p. 140), and at the same time petitions for the emancipation of the slaves were presented. Since that time petitions have attained enormous proportions, and have been presented with every conceivable object, and on every occasion of popular excitement, culminating, perhaps, in the National Petition for the People's Charter in 1838. In 1839 the petition,—the five points of which were, vote by ballot, annual parliaments, universal suffrage, the abolition of the property qualification, and the payment of members—was presented to the Commons with over a million and a-half of signatures attached. Owing to this enormous increase of petitions the practice of discussing them in the House has been dropped since 1839.

Petitions against
Roman
Catholics.

For Parlia-
mentary Reform.
For the Emanci-
pation of the
Slaves.

The People's
Charter, 1838.

Political agitation, and public meetings, began to be employed as a regular and organized means of influencing the government about the reign of George III., although in 1733 popular feeling had compelled Sir Robert Walpole to abandon his Excise Bill.¹ During the reign of George III., political agitation was rife, and frequently took the form of riots, *e.g.*, the *Silk Weavers' riots*, 1765, which obtained a restraint upon the importation of silk from abroad; and the *Lord George Gordon riots*, 1780, in which the rioters invaded the very precincts of the House.

Political
Agitation.

1733.

Silk Weavers'
Riots, 1765.

Gordon Riots.

¹ May, Const. Hist., ii., 266.

In 1787, the *Anti-Slave Trade Association* for the Emancipation of the Slaves was formed, and was followed during the period of the French Revolution by the establishment of democratic associations, which called forth severe measures on the part of the government, continuing in force more or less until the end of the reign. In 1819 it was found necessary to pass what are known as the '*Six Acts*,' a series of repressive statutes, one of which forbade any meeting of more than fifty persons to be held without six days' notice being given by seven householders to a magistrate. About 1828 the agitation of the *Catholic Association* was so violent as actually to overawe the government, and was followed by extreme agitation for Parliamentary Reform, and for the formation of various political unions. The Chartist agitation, too, continued from 1838 to 1848, when it culminated in the failure of an attempt to overawe Parliament. In 1838, the Anti-Corn Law League was formed, and by 1846 had attained its objects¹ (p. 187.)

Anti-Slave Trade Association, 1787.

Democratic Associations.

The "*Six Acts*," 1819.

Catholic Association, 1828.

Agitation for Reform.

The Chartists, 1838—48.

Anti-Corn Law League, 1838.

B. *Official Ranks.*

Official Ranks.

The *Ealdorman*, often an under King, *e.g.*, in *Mercia*, and *Hwiccia*, was the chief magistrate of the shire, appointed as a national officer by the King and Witan (p. 90); the name is a relic of the respect paid to age in primitive times. There was often a

Ealdorman.

¹ Sir T. Erskine May, in summing up the results of political agitation, remarks, (Const. Hist., ii., 418) "Not a measure has been forced upon Parliament, which the calm judgment of a later time has not since approved; not an agitation has failed, which posterity has not condemned. The abolition of the Slave Trade and Slavery, Catholic Emancipation, Parliamentary Reform, and the Repeal of the Corn Laws were the fruits of successful agitation; the Repeal of the Union, and Chartism, conspicuous examples of failure."

tendency to make the office hereditary, especially in the case of the annexation of an under kingdom, although the idea of an Ealdorman was connected with jurisdiction rather than with nobility of blood. The Ealdorman sometimes ruled over two or more shires, he attended the Witenagemot, and it was his duty to lead the host of the shire in war, as well as to sit with the bishop and the sheriff in the shire moot (p. 63), where he received the third penny of the judicial profits. About the time of Ethelred the Danish title of *Jarl* or *Earl* (Norman *comes*), begins to supersede that of Ealdorman. After the Norman Conquest the title of Earl becomes a personal dignity, carrying with it *no administrative functions*, although up to the time of John, the "third penny" continued to be granted to an Earl on his creation.

Jarl or Earl.

Sheriff in
Pre-Norman
times.

The Sheriff (*scir gerefa*, or *reeve*, probably connected with the German *graf*, *grau grey*; or *reafan*, to levy tribute,¹) was the *royal* officer of the shire, (as the Ealdorman was the *national* officer), the nomination, except in the case of the Sheriff of London, being almost always made by the King. The Sheriff was, therefore, regarded as the King's steward and representative; it was his duty to attend the local courts in the royal interest, to declare new laws, to receive taxes, and to administer the King's demesne.

After the
Norman
Conquest.

The Sheriffs after the Norman Conquest, (*vice-comes*), became all powerful in the local courts, owing to the withdrawal of the ealdorman and bishop, and in some cases managed to make their offices hereditary. Their judicial and financial powers were great; in their judicial capacity they held the *Sheriff's Tourn* and *Leet* (p. 67), and

¹ For other derivations see Stubbs' Const. Hist., i., 82, note 7.

administered justice in the local courts ; in their financial capacity they had to render the accounts to the Exchequer twice a year (p. 54), and, as the Barons of the Exchequer were often Sheriffs as well, there were frequent opportunities for fraud, a Sheriff in such a case being enabled to audit his own accounts as a Baron of the Exchequer. *Temp.* Henry I. the Sheriffs had, in many cases, become so powerful, (*e.g.*, Richard Basset and Aubrey de Vere held eleven counties in a joint sheriffdom¹), that the King sought to lessen their power by appointing men of inferior position instead of great barons and officials ; freedom from their exactions was promised by the second charter of Stephen.²

The treaty of Wallingford, Nov., 1153, restored the power of the Sheriffs³ which had waned during the anarchy of Stephen's reign ; *temp.* Henry II. there arose a jealousy, on the part of the Crown, of the power of the Sheriffs, and a desire to subordinate their power to that of the *Itinerant justices*.⁴ In 1170, in consequence of numerous complaints of exactions, the King removed all the Sheriffs and ordered an *Inquest of Sheriffs*⁵ to be held by a commission of *Itinerant justices*. Although the Sheriffs, most of whom were great barons, were acquitted, very few of them were re-instated, their places being taken by royal officers of the Exchequer, with the result of closely connecting the central and local courts. In 1194 the Sheriffs were forbidden to act as justices in their own counties,⁶ and the election of three knights and one clerk in each county was ordered, called *custodes placitorum coronarum*, (the

Inquest of Sheriffs, 1170.

Coroners, 1194.

¹ Stubbs, *Const. Hist.*, i., 392

² *Sel. Charters*, 121.

³ *Ib.* 118, *Mat. Par.*, p. 86. ⁴ *Ib.*, 131, *R. de Diceto*, c. 605.

⁵ *Ib.* 147.

⁶ *Ib.* 260.

Sheriffs not to
hold pleas of the
Crown.

In 1215, by *Magna Carta* (Art. 24),¹ Sheriffs were forbidden to hold any pleas of the Crown at all; they continued, however, to command the county militia until the appointment of Lords Lieutenant, *temp.* Mary, and all writs for the assembly of local forces were sent to them.

After the loss of its judicial power, *temp.* Henry II., the office continued without much alteration. By the *Provisions of Oxford* (1258),² the duration of the office was limited to a year, whilst in the following year the appointment was taken away from the King, but recovered by him shortly afterwards. The election was given to the counties by the *Articuli Super Cartas*, 1300, but taken away by the *Ordinances* of 1311, and declared (in 1316, 9 Edw. II.) to lie with the Chancellor, Treasurer, and Judges. In 1340 (14 Edw. III., c. 7) the duration of the office was strictly limited to one year; this annual appointment of the Sheriffs was frequently evaded, and formed a frequent subject of petition at different times, especially *temp.* Richard II. In 1405 (6 Hen. IV.) Sheriffs were strictly forbidden to give up their office to a deputy. Frequent complaints were made of the fraudulent action of the Sheriffs in connection with the returns of members to Parliament (p. 108), (the writs for the return being sent to the sheriffs), and attempts were made to check the abuse by Statutes, 1407, 1411 and 1445.

To be appointed
annually.

Justices in Eyre.

Justices in Eyre (in itinere) date from the reign of Henry I., who organised circuits of the judges and Barons of the Exchequer for judicial, and more especially for financial, purposes, with the object of bringing the local courts into connection with the central administration. Something of the same kind

¹ Sel. Charters, 300.

² Ib. 395.

had been attempted in the judicial circuits of the Anglo-Saxon Kings, and in the courts held by William I. at Westminster, Gloucester, and Winchester, but the system was not elaborated until the time of Henry II. In 1156 pleas were heard in certain counties, and in 1166, by the *Assize of Clarendon* (*Appendix A.*), justices *in eyre* were sent all over the country; two years later another circuit of judges took place for financial purposes, and another in 1173; in 1176 the *Assize of Northampton* was carried out by six circuits of three judges each (*justitiiarii itinerantes*); subsequent years show other visitations, chief of which were those of 1194 and 1198. By *Magna Carta* (Art. 18) it was provided that the assizes of *Darrein Presentment*, *Mort d'ancestor*, and *Novel Disseisin* (pp. 83, 84), should be held before *itinerant justices* four times a year¹; by Article 13 of the second re-issue of the Charter, 1217, this was reduced to once a year.² During the reign of Henry III. the *itinerant* took place about every seven years, though they were frequently irregular; the justices at this time did not try common pleas, but tried criminals presented by the county courts (p. 65). Until the system of taxing personal property came in (p. 182), the taxes were assessed by the *itinerant justices*. The system was remodelled by Edward I., 1285, in the *Statute of Westminster II.* (13 Edw. I.); and in 1293, and 1299, four circuits were created, each with two justices. The judges sat under five commissions:—

1. *Assize*, for the trial of disputes about real property;

2. *Nisi Prius*, (created by the *Statute of Westminster II.*, 1285), so called from the necessity of questions of fact in civil cases being tried at

Circuits of Judges.

1156.

Assize of Clarendon, 1166.

Circuits, 1168, 1173.

Assize of Northampton, 1176.

Circuits, 1194, 1198.

Regulated by Magna Carta.

And in 1217.

Temp. Henry III.

Temp. Edw. I.

Commissions under which the Justices sat. Assize.

Nisi Prius.

¹ Sel. Charters, 299.

² Ib. 345.

Westminster, *unless before (nisi prius)* the day fixed for the trial, the judges come into the county in which the cause of action lies ;

Oyer and
Terminer.

3. *Oyer and Terminer*, 1328 (2 Edw. III., c. 2) to hear and determine cases of treasons, felonies, and misdemeanors ;

Gaol Delivery.

4. *Gaol Delivery*, 1299 (27 Edw. I.) *i.e.*, to try all prisoners in gaol at the time of their arrival in the town ;

Of the Peace.

5. *Of the Peace*, "by which all justices of the peace, having no lawful impediment, are bound to be present at the assizes to attend the judges."

Conservators of
the Peace, 1195.

Conservators of the Peace. In 1195 certain knights were appointed, before whom every one was to swear to keep the peace,¹ and on several occasions during the reign of Henry III. knights were assigned to secure the peace being kept.² Under Edward I., *custodes pacis*, elected in the county court, appear, and were appointed to secure the enforcement of the Statute of Winchester, 1285.

In 1327, Edward III. enacted that *Conservators of the Peace* should be appointed in every county. In 1360 (34 Edward III., c. 1) these Conservators had criminal jurisdiction given them, and became *Justices of the Peace*. In 1389 a Statute (12 Richard II., c. 10) was passed regulating the wages of the justices, and their sessions, which were to be held quarterly before two justices at least. *Temp.* Henry VIII., 1542, an Act was passed authorising justices to hold *Petty Sessions* for the trial of vagabonds, gamesters, inn-keepers, and others. In 1732 (5 George II., c. 18) attorneys and solicitors in practice were disqualified as justices ; in 1745 (18 George II., c. 20) a property qualification of £100 a year was declared necessary for a County Justice.

Become Justices
of the Peace,
1360.

Petty Sessions.

¹ Sel. Charters, 264.

² Ib. 362, 371.

Justices of the Peace for Counties are appointed by the Lord Chancellor on the recommendation of the Lord Lieutenant.

Lord Lieutenant, as the head of the County Lord Lieutenant. Militia, held an office analogous to that of the Ealdorman of Anglo-Saxon times; he is the chief officer of the county, and the representative of the Crown. First appointed *temp.* Mary, from which time until 1871 the Lord Lieutenant had the supreme command of the County Militia.

STATE OFFICIALS.

State Officials.

The Justiciar, the highest official in the kingdom, Justiciar. and the head of the administration, first appeared in English History *temp.* William I., as the regent of the kingdom in the Sovereign's absence, *e.g.*, William Fitz-Osbern (p. 27); the importance of the office was much increased by Ranulf Flambard under William Rufus, and the Justiciar became, (next to the King), supreme in matters of justice and finance. When the *Curia Regis* split up into the Courts of Common Law (p. 53, sq.), *temp.* Henry III., the Justiciar's power began to decline, as he could not preside over all the three Courts. The office ceased to exist *temp.* Edward I., and the Justiciar's powers passed to

Office originates, *temp.* William I.

The Lord High Chancellor, (so called from *Can-* The Chancellor. *celli*, the screen behind which the secretaries sat to transact business,¹) who first appears in English history *temp.* Edward the Confessor. He was the head of the King's Secretaries and Chaplains, the "Keeper of the King's Conscience," and the *Keeper of the Great Seal*, in which capacity, although subordinate to the Justiciar, he obtained great power, as no grant could be made by the King without the

Office originates, *temp.* Edward the Confessor.

¹ Sir Edward Coke's derivation is *a cancellando*, from cancelling the King's letters patent, when granted contrary to law.

Chancellor affixing the *Great Seal*. After the establishment of the Chancellor's equitable jurisdiction this power increased, and he became the head of the whole legal system. Up to Edward III., the office was always held by Ecclesiastics, owing to their superior education and qualifications for the post; the first lay Chancellor was Robert Bourchier, 1340. From the time of Sir John Knyvett (1372) to Sir Thomas More, no lawyer was appointed; from 1592, there has only been one instance of an Ecclesiastic holding the Lord Chancellorship, viz., Bishop Williams of Lincoln (1621—1626). The Chancellor's office is declared identical with that of Lord Keeper by a Statute of 1563 (5 Elizabeth, c. 18). The Lord Chancellor is a Privy Councillor by virtue of his office, the Speaker of the House of Lords, and Visitor, in right of the King, of all Hospitals and Colleges of the King's foundation; he is also Patron of the King's livings, and has the appointment of all justices and judges.

The Treasurer. *The Lord High Treasurer*, Keeper of the royal Treasure, was an officer created by William I.; the chief duty was to receive the accounts of the Sheriffs in the Exchequer (p. 54). Up to 1371, the office was held by Ecclesiastics, the first lay Treasurer being Sir Richard le Scrope. The last Lord High Treasurer of England was the Duke of Shrewsbury, appointed by Queen Anne, 1714. In 1715, the office was put in Commission, and has since then been vested in the Lords of the Treasury.

Chancellor of the Exchequer. *The Chancellor of the Exchequer*, (office created *temp.* Henry III.), keeps the Exchequer seal. He is now the minister who controls the national revenue, his duties in the Exchequer being purely formal. By the Judicature Act of 1873, his judicial functions were taken away.

Office originates, *temp.* Henry III.

The Lord Privy Seal, was appointed originally to Privy Seal. keep the Privy Seal of the King, so that no independent grants might be made without the knowledge of the Council. Until the reign of Henry VIII., the office was usually held by a Churchman. There is also a *Privy Signet*, kept by the principal Secret- Privy Signet. tary of State.

Secretaries of State, became important officials Secretaries of State. during the Tudor period, (and more especially under Elizabeth). Up to that time the Secretary had First important, temp. Elizabeth. existed only as a Clerk. In 1540 a second Secretary was appointed by Henry VIII.; and up to 1707 there were two only. In that year a third Secretary, (for Scotland), was appointed, but his office was abolished 1746. In 1768 a third Secretary for the Colonies was appointed; the office was abolished 1782, but revived 1794. In 1854 a Secretary of State for War was appointed, and in 1858 a Secretary for India.

COURT OFFICIALS.

Court Officials.

The Lord High Constable, (*comes stabuli*), the The Constable. *staller* of Anglo-Saxon times, was a military officer of the Court, and, with the Marshal, held the Court of Chivalry (p. 59); he was at first an officer of the Exchequer. The powers of the Lord High Constable, which had been defined by Statutes of 1385, 1390, were temporarily much increased by Edward IV. Since the execution of the Duke of Buckingham for treason 1521, the office has never been revived.

The Earl Marshal, (*Mareschal*), first appears in The Marshal. England as a Court official *temp.* William I., when Roger de Montgomery held the office. The Earl Marshal's duties were similar to those of the Constable, with whom he presided in the Court of Chivalry. When the office of Constable fell into

abeyance, the Earl Marshal continued to hold' the Court as 'a Court of Honour in civil cases (p. 59). The Marshal's jurisdiction was defined and checked by the *Articuli Super Cartas* 1300, the *Ordinances* 1311, and again in 1390. The Constable and Marshal were specially charged with the due regulation of the troops.

Lord High
Steward.

The Lord High Steward was in Anglo-Saxon times an official of great importance and power. After the Conquest most of the Steward's powers passed to the Justiciar, and the office fell into abeyance 1265. Since that time a Lord High Steward has only been created on special occasions *pro hac vice*, to preside at the trial of peers, (p. 60), or at Coronations.

Lord
Chamberlain.

The Lord Chamberlain, the *bower thegn* of Anglo-Saxon times, was at first an officer of considerable importance and authority. In 1539 the office of Lord Great Chamberlain was declared next in importance to the Lord Privy Seal. The Lord Chamberlain of the King's Household has at present the duty of licensing plays.

All the Court offices tended to become hereditary at early periods, and were *Grand Serjeanties* (p. 204).

CHAPTER VIII.

THE TOWNS.

Towns.

Before the Norman Conquest.

Pre-Norman.

The borough, (*burh*, a fortified place), was originally a place more capable of defence than the *township* (p. 212). The origin of the *burh* cannot be traced back to a Roman source, nor can any distinct connection be established between the *burhs* and the Roman *municipia*; and the typical example of the fate of Roman towns in England may be said to be that of Anderida, razed to the ground, and Chester, deserted for almost two centuries. Some of the English boroughs grew out of a township, or a collection of townships, whilst others sprang up round the castles of the great nobles, or under the shelter of the monasteries, in the latter cases being the property of the Lord of the Castle, or the Abbot, in the former retaining an independent organisation. In the *burh*, or *burghmen*, met together for purposes of trade as well as of defence; artisans were free from prædial servitude (p. 222), and, as they were unable to pay their lord by labouring on his land, the custom grew up of demanding a money payment or *talliage* (p. 182). These talliages were at first arbitrary, and imposed at the pleasure of the lord, but were subsequently commuted for a fixed rent, although arbitrary talliage continued to be occasionally demanded until Edward III. (p. 191.) The chief magistrate of the *burgh* was the *tun gerefu* (or *town reeve*), or in mercantile towns, the *port reeve* (*porta*, the place where the markets were held). The *burghs* gradually obtained exemption from the jurisdiction of

The Borough.

Town reeve.

Port reeve.

the *hundred*, though they remained subject to that of the *shire*; they had a *burgh-mote*, or *ward-mote*, of their own, held three times a year, for the transaction of their judicial and administrative business. Before the Norman Conquest, many towns had become the absolute property of the great lords (*e.g.*, Chester belonged to the Earl of Mercia), who in such cases appointed the reeve; the rest became the King's demesne, the reeve being a royal nominee. The larger towns, such as Canterbury, as being a collection of townships, had an organisation resembling that of the *hundred*; as they were subject to the shire, the Sheriff collected all taxes and dues, and took note of all judicial proceedings. Some towns, however, to avoid the exaction of the Sheriff, had, even before the Norman Conquest (*e.g.*, Huntingdon paid *firma burgi*, *temp.* Edward the Confessor) been allowed to pay a composition for taxes, and to have a local government of their own, free from interference. The five Danish boroughs of Nottingham, Lincoln, Leicester, Stamford, and Derby, had an organisation in common, and special privileges. In the Domesday survey (p. 188), forty-one towns are mentioned with customs and privileges of their own¹, and ten are put down as fortified.

After the
Conquest.

After the Conquest to 1265.

Charters of
Incorporation.

William I., seeing the importance of the towns, included most of them in the royal demesne, and the practice arose of granting charters of incorporation, and privileges, such privileges being generally the right of independent jurisdiction, granted to the reeve and leet jury, and the right of paying *firma burgi*, or a fixed sum, as rent to the King or

¹ See *Customs of Chester, Lincoln, and Oxford*.—Sel. Charters, 87, 89, 90.

lord, instead of submitting to the exactions of the sheriffs; these charters were given either by the King,¹ or, in the case of towns belonging to a noble, by the owner, *e.g.*, Leicester obtained a charter from its Earl, and Beverley from Archbishop Thurstan, *temp.* Henry I.² Most of the large towns appear to have been vested in the Crown, *temp.* Henry I., and by the time of Henry III. had obtained a distinct recognition of their privileges and immunities.

The readiness with which the towns undertook municipal government, and the ease with which they were incorporated by charter, was due to the fact that they already possessed a more or less complete organisation in the guild system.

The Guilds (*Gildan*, to contribute) are occasionally referred to a Roman origin, but more probably sprang from the sacrificial guilds, which were continued after the conversion to Christianity 597, with the substitution of Christian for heathen rites. The guilds of the Anglo-Saxons involved an oath of fidelity, and a sense of mutual responsibility; they were of various kinds.

1. *The Guild for Religious Purposes*, (the earliest of all), such as burying the dead, the holding of annual feasts, and the levying of contributions for the maintenance of services. Chief of these were the guilds of Exeter and Cambridge, the latter of which was also connected with the

2. *Frith Guild*, an association for the purposes of

¹ "The King was possessed of some towns *antiquo jure Coronæ* as part of the original inheritance of the Crown, of others by *ancient escheat*; the former were called ancient *Demesne*."—Madox, *Firma Burgi*, p. 5.

² *Sel. Charters*, 109. From the towns belonging to lords unable from their position to grant Charters, sprang the market towns. See Stubbs, *Const. Hist.*, i., 625, sq.

mutual protection and police. These guilds undertook to capture and punish thieves; the guild brethren were, by the laws of Ini and Alfred,¹ to share in the *wergild* of a fellow member. There is the code of a *frith guild* in London with elaborate police arrangements, *temp.* Athelstan.

Social Guilds. 3. Associations for *social* purposes, akin to our modern clubs.

Craft Guilds. 4. *The Craft Guilds*, or association of craftsmen, such as dyers, and shoemakers; these guilds, which obtained certain privileges connected with their special trade, frequently came into collision with the more powerful and aristocratic *merchant guilds*. *Temp.* Edward III. they developed into the Chartered trade companies.

Merchant Guilds. 5. *The Merchant Guilds* (Ceapmanne Guilds), most important of all. As early as the time of Edgar certain German merchants in London, (the originators of the Hanseatic league), were formed into a guild with special privileges. Their history in Anglo-Saxon times is obscure, but after the Norman Conquest they tended to absorb in themselves all the rights of municipal government. Occasionally a single guild formed the nucleus of the town, and expanded to receive all the free traders and artisans of the borough; in this case a regular municipal organisation was employed in the constitution of the guild. Another more common case was when several guilds co-existed in a town, each with a separate organisation; over these associations there is always one aristocratic guild, that of the *Merchants*. These *Merchant Guilds* often met to make laws regulating the trade of the towns; often held land in their corporate capacity; and sometimes even exercised judicial functions, *e.g.*, in the

¹ Sel. Charters, 63.

Charter of Beverley,¹ the burgesses are granted their *hanshaus* (or *guildhall*) "that they may there make their own statutes." As a rule no one but a member of the guild might trade in the town, and this privilege is specially recognised in the Charter of Henry II. to Oxford.² Charters of Henry II. and Richard I. to Winchester were made to "our citizens of Winchester of the Guild of the Merchants."³ By degrees, with the growth of independent municipal authority, the Merchant Guilds developed into the Municipal Corporations.

Towns from Henry II. to 1265.

Towns from
Henry II. to
1265.

From the time of Henry II. the growth of the towns was rapid. *Temp.* Richard I. and John, many towns bought charters conferring various degrees of privileges in proportion to the sum paid. By the 13th Clause of Magna Carta the *antiquæ libertates* and *liberæ consuetudines* are confirmed to all cities and boroughs. The privileges granted were usually self-government⁴, self-assessment, free election of magistrates,⁵ exemption from the interference of the Sheriff, and from the wager of battle (p. 71). The *firma burgi*, the *ferm* or rent paid to the King, was portioned out amongst the householders, and occupiers of land in the borough; those contributing towards it held their tenements by *burgage tenure* (p. 205). Many towns had their own jurisdiction independently of the shire-moot, and many old customs, such as *compurgation* (p. 70), were preserved in London, and other towns, long after they had been abolished in the Sheriff's Court. When the privilege of independence was gained,

Firma Burgi.

¹ Sel. Charters, 110. ² Ib. 167. ³ Ib. 165, 265.

⁴ *Charters of Dunwich, Helston.*—Sel. Charters, 311, 313.

⁵ *Charters of Lincoln, Nottingham, Northampton.*—Sel. Charters, 267, 309, 310, 312.

the right of electing magistrates became of importance. The charter of John to Lincoln¹ (1200) authorises, *per commune consilium civitatis*, two lawful and discreet men to be reeves, who, as they are elected by the citizens, may be deposed by them, and who are to hold their office during good behaviour. The most important municipal privilege was that of a town being enabled to make its own terms with the Exchequer, for it became necessary to refer to the citizens on the subject of the taxation of their towns. Local representatives were consulted by officers from the Exchequer, but it would often be found more expedient for such consultation to take place at some central point like London, and the fact that Simon de Montfort's summons of the burghers to Parliament, 1265 (p. 130), contained no instructions as to who was to send them or how they were to be elected, shows that *the election of borough representatives was no new thing*.

History of
London.

Chief points in the History of London to Edw. I.

Before the Norman Conquest London was frequently attacked and burnt by the Danes, *e.g.*, 839, 893, 992, 1009; it was called by Bede, writing *circ.* 720, a great market, and its wealth may be estimated from the fact that it paid £15,000 out of £82,000 raised by Canute from the whole kingdom.² By the Norman Conquest it had an organisation resembling that of the shire, and was divided into *wards* answering to *hundreds*, its chief officers being the bishop and port reeve. It obtained a charter from William I.,³ and a much more extended one from Henry I.⁴ By this charter the citizens obtain the *ferm* of the county of Middle-

¹ Sel. Charters, 312.

² Hallam, *Med. Ages*, ii., 158.

³ Sel. Charters, 83.

⁴ *Ib.* 108.

sex; the right of electing their own sheriff and magistrates, freedom from *Danegeld* (p. 180), *murdrum*, and *wager of battle* (p. 71), exemption from toll, both in England and at the ports; they are to hold a *husting* court once a week, and to have their *wardmoot* and dues.¹ *Temp.* Stephen, the Londoners were active in support of the King, whom they joined in electing.² *Temp.* Henry II., the number of sheriffs seems to have varied from four to two or one; under Richard I. appears the first Mayor of London, 1191, when John, who was acting as regent in his brother's absence, granted the Londoners their *communa*, or commonalty.³ In 1196, the excessive aids demanded from the Londoners caused the riots under William FitzOsbert.⁴ Under John the citizens appear on the side of the Barons; they had aided in deposing Longchamp, 1191 (p. 46), and now join in wringing the *Charter of Liberties* from the King, 1215; their privileges are expressly confirmed by the Charter (Art. 13),⁵ whilst the Mayor of London (who becomes Lord Mayor *temp.* Edward III.) is one of the Barons⁶ appointed to ensure the provisions of the Charter being carried out. In the same year John granted a charter to London allowing the citizens to elect their mayor annually.⁷ Henry III. was frequently in collision with the Londoners, and in 1243 exacted a heavy talliage⁸; Edward I. subsequently suspended for some years the whole

First Mayor of
London, 1191.

Charter granted
by John, 1215.

London to the
reign of
Edward I.

¹ "During the Norman period," says Professor Stubbs (Const. Hist., i., 407) "London appears to have been a collection of small communities, manors, parishes, church-sokens, and guilds, held and governed in the usual way."

² Sel. Charters 114, *Wm. Mal.*

³ Ib. 252, *Benéd. Abb. Ric. Divis*, p. 53.

⁴ Ib. 255, *Rog. Hov.* iv., 5.

⁵ Ib. 298.

⁶ By Matthew Paris all citizens of London are said to be called "barones," *propter civitatis dignitatem*.

⁷ Sel. Charters, 314.

⁸ Ib. 327, *Mat. Par.*, p. 600.

municipal government of the city, which at that time was carried on by the mayor, assisted by two sheriffs, twenty-five aldermen, presiding over the wards, and (from 1285) common councillors.

Later History of
Towns.
Municipal
Boroughs.

Later History of Towns.

Municipal Boroughs. From the time of Henry III. the merchant guilds, and other governing bodies of the towns, became merged in the "Corporation," which by degrees took the form of a chief magistrate, (or mayor), aldermen, and town councillors, the constitutions varying in many ways in the different boroughs, but growing more or less on the same lines. At first the mayor, elected by the whole body of the burgesses, was the only official; by degrees, however, with the development of commerce and the consequent growth of the towns, aldermen and councillors were chosen from the more powerful burgesses, and gradually assumed the position of close Corporations electing their own members. Under the Tudors the system of vesting all municipal authority in the Corporations was encouraged, and to such towns as still retained the power of free election, Charters were granted by the Crown, expressly giving the whole authority to the mayor and council, who were in the first instance the nominees of the Crown, and were subsequently to be self elected. To these close bodies the power of electing the representatives of the town in Parliament was often entrusted (p. 133), and the Crown thus obtained an enormous accession of power. During the struggle between the Parliament and the Crown, the Corporations became imbued with a spirit of independence, which, being continued under Charles II., led to the Confiscation of the Charters, "the most dangerous aggression on public liberty that occurred in the reign."¹

Close
Corporations.

Confiscation of
the Charters

¹ Hallam, *Const. Hist.*, ii., 453.

In 1683, Charles II. caused an information to be brought against the Corporation of London, *quo warranto* they had passed a by-law imposing tolls on goods brought into their markets, and had petitioned the King for the meeting of Parliament 1679. The Corporation was declared by the Court of King's Bench to have forfeited its charter, and had to make the most humble submission to avoid its confiscation. Charles at once proceeded against other towns; in 1684, Judge Jeffreys, on the Northern circuit, "made all the charters, like the walls of Jericho, fall down before him, and returned laden with surrenders, the spoils of towns." The charters thus surrendered by the towns were replaced by others, "framing the constitution of these municipalities in a more oligarchical model, and reserving to the Crown the first appointment of those who were to form the governing part of the Corporation.¹" James II., in his desire to conciliate the country, restored many of the old charters, but matters were little mended for the burgesses generally, and throughout the eighteenth century the principle of close corporations was maintained; the burgesses in almost every instance had no voice in the election of their governing body, and the members of the Council almost invariably neglected their duties to the town for the advancement of their personal interests. All the borough patronage was in their hands, and was usually dispensed in the worst possible manner, whilst the Corporation often possessed trading privileges, which were highly injurious to the general trade of the town.

Writ of Quo
Warranto against
London, 1683.

This shameful state of things continued until the Municipal Corporations' Act of 1835, which

¹ Hallam, Const. Hist., ii., 455.

Municipal
Corporations
Act, 1835.

provided that the Town Council, all the members of which must be householders and ratepayers in the borough, should consist of a Mayor, chosen annually by the Council, of Aldermen, elected by the Councillors from their own body to hold office for six years, and of Councillors, elected by the Burgesses; special trading privileges were taken away from the Corporations, the borough jurisdiction was regulated, and ample provisions made for the effectual administration of local self-government. The Corporation of London alone was exempted from the provisions of this Act.

Parliamentary Boroughs. See *Borough Franchise* (pp. 132—4); *Burgesses* (p. 135); *Bribery* (p. 137); *Reform* (pp. 140—1).

CHAPTER IX.

THE CHURCH.

History to the Norman Conquest.

History to the
Norman
Conquest.

The marriage of Ethelbert of Kent with Bertha, the Christian daughter of Charibert of Paris, afforded Pope Gregory an opportunity for the conversion of the south-east portion of England; an opportunity which was made the most of by the despatch of a mission with Augustine at its head. Ethelbert was converted 597, and Kent soon adopted the new religion, the archiepiscopal see being established at Canterbury. The marriage of Edwin of Northumbria with a Kentish princess, Ethelburga, led to the conversion of the northern kingdom, over which the already converted Picts and Scots exercised some influence. In 635, Birinus commenced the evangelisation of Wessex, and in spite of the antagonism of such champions of heathenism as Penda of Mercia, Christianity was, by the end of the seventh century, firmly established as the religion of the country, and that, too, in the Roman, as opposed to the Celtic form. The contest at the Synod of Whitby, 664, between the Celtic and Roman priests, is of vast importance, and, had it been decided otherwise, might well have altered much in the country's history; the nominal questions at issue—the shape of the tonsure and the date of observing Easter—were decided in favour of Rome by Oswi of Northumbria, the result being, that saved from the ecclesiastical disorganisation of the Irish Church, England remained connected with Rome, and with Europe generally. In 668, Theodore of Tarsus, Archbishop of Canterbury,

Introduction of
Christianity
into Kent, 597.
Northumbria,
627.

Wessex con-
verted, 635.

Synod of
Whitby, 664.

Formation of
Dioceses.

Parishes.

Early Union of
Church and
State.

commenced the organisation of a thoroughly National Church by dividing the country into dioceses, formed on the lines of the old tribal divisions ; and to him is also ascribed the creation of parishes, which, as a rule, corresponded to the townships (p. 212), and were presided over by the parish priest. This ecclesiastical organisation preceded, and formed a model for, the later secular organisation. In Anglo-Saxon times the close union of Church and State is very marked ; Church Councils, attended by the King and Ealdormen, existed from a very early period, but as the Witenagemot, which was composed of almost the same members as the Councils, grew into more importance, these Councils gradually became exclusively ecclesiastical synods, whilst most of the Witenagemots legislated on ecclesiastical subjects. The Bishops sat with the Ealdormen in the Shire Courts,¹ and the Clergy were tried in the Local Courts, there being no separate ecclesiastical jurisdiction in criminal cases. The Bishops, as ministers of the King (*e.g.*, Dunstan, and Archbishop Sigeric, the inventor of the Danegeld, p. 180), or even as soldiers (*e.g.*, Bishop Elstan of Sherborne, who defeated the Danes), obtained an immense amount of secular power. From this early connection between Church and State sprang that character of nationality, which has always so strongly marked the English Church.

There appear but few cases of Roman legations before the Conquest ; the services of the Church were principally conducted in the Anglo-Saxon language, and the introduction of foreign Bishops, by Edward the Confessor, was by no means viewed with favour by the nation. Dunstan openly defied the Pope, and although it became the custom for

¹ *Sel. Charters*, 73. *Canute*, cap. 18.

Archbishops to fetch their *pallium* from Rome, and although the collection of *Peter's Pence*, (a contribution of *id.* from every hearth), dates from the beginning of the tenth century, Roman influence in England was small before the Norman Conquest.

Peter's Pence.

The Clergy during the Anglo-Saxon period, occupied, as the only educated class, a highly honourable position; the oath of a Priest was equal to those of twenty *ceorls*, the *wergild* of an Archbishop equalled that of an *atheling*, a Bishop was on a par with an ealdorman¹; whilst the laws of Edward give rank and power to any "scholar who through learning throve so that he had holy orders."²

Honourable position of the Anglo-Saxon Clergy.

Relations to the State, from the Norman Conquest to the Reformation.

Relations to the State from the Norman Conquest.

William I., in deference to the Pope (Gregory VII.), who had materially aided him in his Conquest, separated the Ecclesiastical and Secular Courts by an undated Charter³, providing that no Bishop should try cases in the Local Courts, that no layman should try ecclesiastical cases, and that contempt of the jurisdiction of the Ecclesiastical Courts should be punished, if need be, by the secular arm; and the policy of Archbishop Lanfranc tended to form a bond of union between the Churches of England and Rome, a bond which, so far, had had no existence. At the same time, however, William showed himself determined to maintain the supremacy of the King; in 1076 he refused to do homage to the Pope for the Crown of England, and about the same time declared—

Separation of the Temporal and Spiritual Courts by William I.

William's Church Policy.

¹ Sel. Charters, 65.

² The laws of Edgar, Sel. Charters, 71, ordain "that God's Churches be entitled to every right."

³ Ib. 85.

1. *That no Legate, or Papal Bull, should be received in England, and no Pope recognised, without the royal sanction.*

2. *That no enactment of an Ecclesiastical Council should become law until confirmed by the King.*

3. *That no tenant in capite should be excommunicated without the King's leave.¹*

William II. and
Anselm, 1094.

William II., in 1094, quarrelled with Anselm on the question of the temporalities of the See, which he refused to give up.

Henry I.

Henry I., in his *Charter of Liberties*, declares that, when a See is vacant, he will not sell, nor let to farm, nor take anything from the demesne of the Church, nor from its tenants, until a successor is appointed.²

Question of
Investitures.

In Henry's reign occurred the famous "Contest of Investitures" between the King and Archbishop Anselm, as to whether the prelates were to receive their investiture from the Pope or the King; the question was of importance, as if the King did not receive homage and fealty from a Bishop, he had no claim on his military services as his feudal lord. The matter ended in a compromise (Aug. 1106), by which the Pope was to invest with the ring and crozier, as emblems of spiritual jurisdiction, whilst the King was to receive the homage and fealty, in exchange for the temporalities.³

Compromise,
1106.

Henry subsequently acknowledged the appellate power of the Pope in ecclesiastical matters, though he would not permit a Legate to visit England without the royal license.

Stephen.

Stephen, finding it necessary to conciliate the Clergy, to whom he principally owed his election, granted them considerable liberties and concessions in his second Charter⁴ (*Appendix A.*), but his sub-

¹ Sel. Charters, 82. *Eadmer.*

² Ib. 100.

³ Ib. 97. *Flor. Wig.*, 1107.

⁴ Ib. 120.

sequent imprudence in arresting Roger, Bishop of Salisbury, the Justiciar, and Alexander, Bishop of Lincoln, June, 1139, and in sending Nigel, Bishop of Ely, the Treasurer, into exile, roused the hostility of the whole ecclesiastical body; the result was civil war and anarchy, lasting until the Peace of Wallingford, 1153, which was due in great measure to the mediation of the Clergy.

Arrest of the Bishops, 1139.

In 1163, the Clergy, headed by Becket, who, after his appointment as Archbishop of Canterbury, 1162, had changed from a statesman to an enthusiast of the Church, made the first stand against a tax proposed by the King, by refusing to pay

Becket.

Danegeld; the separation of the Secular and Ecclesiastical Courts had moreover given facilities

His opposition to taxation, 1163.

for the escape from justice of criminal Clerks, and some modification of the existing laws was earnestly

Need of Ecclesiastical Reform.

needed. Becket vehemently opposed Henry's plan of reform; the King, however, was firm, and in

1164, the *Constitutions of Clarendon* (*Appendix A.*), which the prelates promised to observe, settled

Constitutions of Clarendon, 1164.

the different questions at issue, in accordance with the customs of Henry I., ascertained by recogni-

tion. By these *Constitutions*, which point out the relations between Church and State, the supremacy

of the latter was maintained; the jurisdiction of the King's Courts was extended to Clerks; the

King was to have the custody of vacant Sees; and appeals to Rome were checked by no Clerk being

permitted to leave the kingdom without the King's permission.¹ The quarrel between the Archbishop

and the King still continued, and Becket sought refuge in France, remaining there until Henry,

who feared his influence on the Pope, made overtures for a reconciliation. Shortly afterwards,

¹ Sel. Charters, 129, (*Gervas*, c. 1384). Ib. 138.

Becket was murdered 1170, and Henry found it necessary to make complete submission to the Pope (Alexander III.)

Clerical
opposition to
taxation, *temp.*
Richard I.

During the reign of Richard I., the clergy appear as the opponents of unconstitutional taxation (p. 179), and in 1198 Hugh, Bishop of Lincoln, and Herbert, Bishop of Salisbury, refused to contribute to a military aid, demanded by the King, on the ground that by their tenure they were bound to military service within the realm only¹; the result was the resignation of Archbishop Hubert Walter, the Justiciar (p. 46). In the same year the Clergy refused to pay the carucage of 5/., but were soon brought to submission by an edict of the King, that any man who forfeited to a clerk should not be obliged to satisfy him, but that if a clerk forfeited to a layman, he should at once be compelled to give compensation.² The quarrel of John with the Pope (Innocent III.) arose about the appointment of a successor to Archbishop Hubert Walter, who had died 1205. The freedom of elections to bishoprics had hitherto been only nominal, but on the death of Hubert Walter, the monks at Canterbury elected one Reginald, their sub-prior; the King nominated John de Grey, Bishop of Norwich; both elections were disregarded by the Pope, who named Stephen Langton, and consecrated him 1207. John refused to accept the nomination, and on the submission of the Canterbury monks to Innocent, expelled them. In the same year, John roused the hostility of the Clergy by demanding a large part of the Church revenues³; this demand he subsequently relaxed, but in 1208, on the Pope putting England under an interdict,⁴ John confiscated all the estates and goods of the

John's quarrel
with Innocent
III.

¹ Sel. Charters, 255. *Rog. Hov.*, iv., 40.

² Ib. 258. *Rog. Hov.*, iv., 40.

³ Ib. 273, *Ann Waverl.*, 1207. ⁴ Ib. 273, *Mat. Par.*, 226.

Clergy.¹ The Pope retaliated by excommunicating the King (1209), and by formally deposing him 1212; the execution of the deposition he entrusted to Philip of France.² John, unsupported by his people, opened negotiations with Rome, and at length surrendered his kingdom to Innocent, receiving it again to be held of the Pope at the annual rent of 1000 marks, and on the condition of swearing fealty,³ May, 1213. This disgraceful surrender bore important fruit, by sowing amongst the people of England the seeds of an enmity to Rome, which ultimately ripened into the Reformation *temp.* Henry VIII. As an immediate consequence the whole kingdom was consolidated against the King; an attempt to win over the Clergy by making restitution, and by the grant of freedom of election,⁴ 1215, failed, and John found himself compelled to sign *Magna Carta*, the first article of which expressly guarantees the Liberties of the Church.⁵

His deposition
by the Pope,
1212.

His submission,
1213.

Its consequences.

Throughout all these reigns there exists a close bond of union between Church and State in the employment of ecclesiastics as ministers of the King, *e.g.*, Lanfranc, Roger of Salisbury, Becket, (during the earlier portion of his career), and Hubert Walter.

Employment of
Ecclesiastics as
Statesmen.

The alliance between King and Pope begun by John's submission, continued throughout the reign of Henry III., and until the action of Boniface VIII. against Edward, 1296; the Pope, who, in 1223, had declared Henry of full age to govern,⁶ exacted large sums of money, especially from the Clergy, and, if the King remonstrated, as he did in 1246, had only to use a threat of deposition to bring Henry to sub-

Papal exactions,
temp. Henry III.

¹ Sel. Charters, 274, *Ann Wav.*, 260.

² Ib. 275, *Mat. Par.*, 232.

³ Ib. 276, *Mat. Par.*, 236.

⁴ Ib. 288.

⁵ Ib. 296.

⁶ Ib. 322, *Mat. Par.*, 318.

mission ; these exactions were frequent. *e.g.*, 1229, 1246, 1252, 1256, and were almost always sanctioned by the King, to whom, in 1254, Innocent IV. offered the crown of Sicily for his son Edmund. Henry had contracted enormous debts in supporting Innocent IV. against the Emperor, and in 1257 obtained 52,000 marks from the Clergy to pay the Pope for the crown of Sicily.¹ During the war with the Barons, the Pope supported Henry, and, in 1264, excommunicated many of the supporters of the Provisions of Westminster.

Edward I.

Temp. Edward I. the relations of Church and State took a more settled shape under the defining hand of the King. An assertion of the independence of the Church by Archbishop Peckham, caused the King to put forward, in 1279, the famous *Statute of Mortmain* or *de religiosis*,² (7 Edw. I, c. 2), (the germ of which lies in the 43rd Article of the second re-issue of the Charter, 1217,³ and in the 14th clause of the *Provisions of Westminster*,⁴) and which stands to ecclesiastical tenures in the same position that the Statute *Quia Emptores* (p. 209) does to lay tenures. The object of the Statute was to prevent persons giving their estates to religious corporations, and receiving them back to be held of the Church, and so depriving the State of the services due from the fiefs. For some years there was a struggle between the King and Archbishop Peckham on the subject of the privileges of the Clergy ; in 1285 was issued the writ *circumspecte agatis* defining the jurisdiction of the spiritual courts, and confining it to questions of tithe, and other offences, such as immorality, which were properly cognisable there ; the question of *right* must be tried in the King's Court, *i.e.*,

First Statute of
Mortmain, 1279.

Writ
circumspecte
agatis, 1285.

¹ Sel. Charters, 331, *Mat. Par.*, p. 946.

² *Ib.* 459.

³ *Ib.* 347.

⁴ *Ib.* 404.

whether a tithe is due and accustomed ; the *fact*, *i.e.*, whether such tithe, admitted to be accustomed, has been withheld, may be tried in the Ecclesiastical courts. In 1296 the Pope (Boniface VIII.) issued a Bull, known as *Clericis laicos*, forbidding the Clergy to pay any taxes, or grant aids, in consequence of the many demands for money made by the King during the French War ; thereupon the Clergy, headed by Archbishop Winchelsea, refused to accede to a request for money made by the King. Edward at once declared them incapable of obtaining justice in the King's Court, and confiscated the ecclesiastical estates of Canterbury ; the Clergy were forced to submit.

Bull *clericis laicos*, 1296.

Clergy outlawed.

The exactions of the Papacy had rendered any dealings with Rome highly unpopular with the nation, and in 1307, the *Statute of Carlisle* forbade money to be raised by talliage to be sent to Rome, whilst in the same Parliament the various forms of Papal exactions were petitioned against. The weakness of Edward II. enabled the Popes to flatter or defy him as suited their purpose. Clement V. procured the persecution of the Templars in 1310 (p. 76), and reserved to himself many episcopal appointments ; on the election of John XXII., 1316, these reservations were frequent. Edward's submission to the Pope brought him into collision with the national Clergy, at the head of whom were Adam Orleton, Bishop of Hereford, and the Bishops of Bath, and Lincoln ; the King sent Stratford to the Papal Court at Avignon, with complaints of their conduct, but gained nothing ; he managed to alienate Stratford, by opposing his nomination to the see of Winchester, and the bishop subsequently drew up the Articles of Deposition (p. 13).

Statute of Carlisle, 1307.

Edward II.

His quarrels with the Bishops.

During the reign of Edward III., there was a

Anti-Papal
legislation, *temp.*
Edward III.

good deal of anti-papal legislation, whilst the National Church itself, owing in great measure to its growing secularity, and to various abuses, such as the holding of pluralities, fell into disfavour with the Parliament, and efforts were made to secure the appointment of laymen to the offices of State, *e.g.*, after the quarrel of Archbishop Stratford and the King, in 1340, the Chancellorship was for the first time given to a layman (Sir Robert Bouchier), (p. 248.)

First Statute of
Provisors, 1351.
"Provisions."

In 1343 an attempt was made to check the promotion of aliens in England, by a petition against the "provisions," and reservations, of the Pope. In 1351 was passed the first *Statute of Provisors* (25 Edw. III., c. 6.) forbidding "*provisions*," (*i.e.*, the practice of the Pope "providing" an ecclesiastic with a benefice before such benefice was vacant); the term was subsequently applied to "any right of patronage exerted, or usurped, by the Pope." In 1353 this statute was supplemented by the first *Statute of Præmunire* (27 Edw. III., c. 1), which forbade the judgments of the King's Court to be questioned in foreign courts, under heavy penalties. In 1365 another statute forbade any Papal instruments to be brought into the country, whilst the Statute of *Præmunire* was confirmed. In 1365 a demand, made by Pope Urban V., for the arrears of the annual tribute promised by John, and which had not been paid since the reign of Edward II., was indignantly refused by Parliament, on the ground that the promise, being made without the consent of Parliament, was valueless.

First Statute of
Præmunire,
1353.

Clerical abuses.

The abuses, which had sprung up in the Church of England itself, had, by the latter part of Edward's reign, caused a frequent demand for clerical reform, and the last years of the reign are occupied with the movements of Wycliffe, who maintained that

Wycliffe.

no ecclesiastic should hold secular offices, and who was the first English theologian who dared to challenge the doctrine of the Church; his chief points were, 1, personal responsibility; 2, the supremacy of the Scriptures; 3, salvation by faith; he also denied the necessity of priestly mediation, thus rousing against himself a most violent opposition, and causing his teaching to be declared subversive of society.

His Doctrines.

Under Richard II., the anti-papal legislation continued; in 1390 a *Statute of Provisors* was passed, enlarging the previous Statutes on the subject, and in 1393 the *Statute of Præmunire*¹ (16 Ric. II., c. 5) (so called from the word with which it commences), forbidding any attempt to procure Papal instruments against the Crown. In 1391, the *Statute of Mortmain* was re-enacted and enlarged.

Richard II.

Statute of Provisors, 1390.

Statute of Præmunire, 1393.

Statute of Mortmain, 1391.

Throughout Richard's reign the Lollards, (babblers), as the followers of Wycliffe were called, had been gaining strength; a Statute passed against them in 1381 (5 Ric. II., st. 2, c. 5) was repealed almost at once, and in 1395 a Lollard petition was presented to Parliament, remonstrating against the abuses rife in the Church, and especially against the holding of secular offices by Clerks. The cause of the spread of Lollardy was, in great measure, the abuses which existed in the Church, especially amongst the Mendicant orders, most of which were useless, and many profligate; the wealth of the Church, too, was enormous, and was chiefly de-

The Lollards demand Church Reform.

¹ The offence of *præmunire*, the punishment of which was outlawry, forfeiture, and imprisonment during pleasure, was, originally, upholding a foreign power against the Crown, or procuring Papal instruments and Bulls against the King. The term was subsequently applied to various offences, to which the penalties of *præmunire* were attached.

voted to the maintenance of the Clergy in luxury and idleness.

Union of the
Church and
Crown, *temp.*
Henry IV.

Statute de
heretico
comburendo,
1401.

Under Henry IV., however, persecution of the Lollards began; a close ally of the Church, to which he looked for support, he gave his assent in 1401 to the celebrated Statute *de heretico comburendo* (2 Henry IV., c. 15), forbidding any one to preach without the Bishop's license, and subjecting Lollards, who refused to recant, to the punishment of burning to death. The feeling of the Knights of the Shire, however, appears to have been against the wealth of the Clergy, as, in 1404 and 1410, proposals were made in the Lower House to confiscate the temporalities of the Church.

Temp. Henry V.

Under Henry V. the alliance between the Church and the King remained unbroken, and the persecution of the Lollards continued, (*e.g.*, Sir John Oldcastle executed 1417), whilst Statutes were frequently passed against them.

The Church
during the Wars
of the Roses.

During the Wars of the Roses, the Church lost what little popularity it had retained; the dignitaries of the Church, such as Cardinal Beaufort, established a closer relation with Rome, and as a means of defending themselves against their enemies, formed a strict alliance with Edward IV. and his successors.

In spite of the many attempts, which had been made at various times, to check the power of the Pope in England, and to reform ecclesiastical abuses, the state of the Church at the time of the accession of Henry VIII., was such as to render its severance from Rome by the strong hand of the King peculiarly acceptable to the people.¹

¹ "Under the shadow of this majestic unity," (*i.e.*, of Church and State), "grew ignorance, errors, superstition, imperious

Henry, who in 1521, had received from Leo X., as a recognition of his services in having published a book against Luther, the title of *Defender of the Faith*, (a title still borne by the Sovereign), was urged on to rectify ecclesiastical abuses by the Parliament known as the *Reformation Parliament*, which met in November, 1529, and sat for seven years. Predisposed in favour of reform, the King was not loath to countenance the action of Parliament, which proceeded to pass several regulations, forbidding the holding of pluralities, the payment of excessive ecclesiastical fees, and the like; in 1531, the whole body of Clergy who had recognised Wolsey as the Pope's Legate, were declared by Henry to have incurred the penalties of *præmunire*, and only escaped on paying £100,000 and acknowledging the King as "Supreme head of the Church and Clergy, so far as the law of Christ will allow." In 1532, the Reformation Parliament passed an Act forbidding all appeals to Rome under severe penalties (24 Henry VIII., c. 12), and in 1534 the payment of *Annates* to the Pope was forbidden.

Defender of the Faith.

The Reformation Parliament, 1529.

Pluralities and excessive fees forbidden.

The Clergy incur the penalties of *Præmunire*, 1531.

Appeals to Rome forbidden.

Annates.

These *Annates*, or the first year's income of bishoprics and benefices, had been first exacted in England by Alexander IV., 1256, for five years,¹ and were demanded by almost all subsequent Popes, to the great oppression of the Clergy. In 1405 the *Annates* were protested against by Parliament as authority and pretensions, excessive wealth, and scandalous corruption. . . . From the time of Wickliffe to the Reformation, heresies and schisms were rife; the authority of the Church, and the influence of her Clergy were gradually impaired; and, at length, she was overpowered by the ecclesiastical revolution of Henry VIII. With her supremacy perished the semblance of religious union in England."—MAY, Const. Hist., iii., 61.

¹ Stubbs, Const Hist., iii., 337.

"a damnable custom," and, in 1531, a petition against their payment was presented to the King by Convocation. Three years later (25 Henry VIII., c. 20) they were forbidden, whilst at the same time it was provided that "henceforth no Bishop shall be commended, presented, or nominated by the Bishop of Rome, nor shall send thither to procure any Bulls or Palls," but that vacant bishoprics should be filled by *Congé d'elire*.¹ In 1534 the first-fruits and tenths were vested by the Reformation Parliament in the King (26 Henry VIII., c. 3), and all subsequent Sovereigns, (with the exception of Mary), continued to exact them, until they were given up by Anne.

Final quarrel
with Rome,
1534.

In 1534, Henry, who had finally quarrelled with Rome, owing to Clement VII. having annulled Archbishop Cranmer's decision as to the divorce from Catherine of Aragon, took the title of "Supreme Head of the Church of England on earth," and the *Acts of Supremacy* (26 Henry VIII., c. 1 and c. 13) were passed.

Act of
Supremacy,
1534.

This rupture with Rome, which had so great an effect in increasing the national spirit that, up to the Restoration of Charles II. at least, ever characterised the English Church, was quickly followed by the *suppression of the lesser Monasteries* whose annual income was £200 and under, Feb., 1536; the ground of the suppression was the profligacy of the inmates of the Monasteries. The confiscated revenue, amounting to over £30,000 was transferred to the Crown, and administered by the *Court of Augmentation* (p. 52). The immediate result of the suppression of the lesser Monasteries was

Suppression of
the lesser
Monasteries,
1536.

¹ *Congé d'elire*. On a See becoming vacant, the Sovereign sends a warrant to the Dean and Chapter to proceed to elect a Bishop, who is named by the Crown, and whom the Chapter must elect, under penalty of *præmunire*.

the insurrection in Yorkshire, known as the Pilgrimage of Grace, and which was with difficulty suppressed, owing to the action of the ejected monks. Three years later, the greater Monasteries were dissolved, bringing an enormous increase of wealth to the King, whilst the House of Lords suffered a considerable diminution in its numbers by the exclusion of the mitred Abbots (p. 123).

Pilgrimage of Grace, 1536.

Of the Greater Monasteries, 1539.

In the same year, 1539, was passed the *Statute of the Six Articles*, which struck a great blow at the Reforming party, (1) it imposed the penalty of death on any one denying the truth of Transubstantiation, and the penalty of forfeiture on any one denying (2) Communion in *one* kind; (3) Celibacy of the Clergy; (4) Vows of Chastity; (5) Private Masses; (6) Auricular Confession. The provisions of this Act were relaxed, 1544.

Statute of Six Articles, 1539.

In 1549, was passed the first *Act for the Uniformity of Service*, (2 and 3 Edward VI., c. 1) enjoining the use of "the order of Divine worship," appointed by a Committee of Bishops in the previous year, whilst in the same Parliament tithes were regulated, and celibacy of the Clergy abolished.

First Act of Uniformity, 1549.

In spite of the disfavour into which the Church of Rome had fallen in England under Henry VIII., the change of doctrine was by no means universally popular, and was protested against by risings in the east and the west of England. In 1552, a second *Act of Uniformity* of Common Prayer and administration of the Sacraments was passed (5 and 6 Edw. VI., c. 1). The persecutions of Mary's reign materially aided the cause of the Reformation, and on the accession of Elizabeth, the Reformed Religion was accepted without demur by the large majority of the nation.

Second Act of Uniformity, 1552.

The ecclesiastical policy, which occupies so

Elizabeth's
Ecclesiastical
policy.

prominent a position in the reign of Elizabeth, and which resulted in the close connection of the Reformed Church, (the creation of Parliament), with the State, was entirely aimed at the maintenance of the Supremacy of the Sovereign over the Church; the Dissenting and Non-conforming members of the Protestant Church were made the subjects of persecuting Statutes no less than the Roman Catholics; and the whole of the reign is one long tale of persecutions of the one side or the other.

Persecution of
Catholics and
Puritans.

Act of
Supremacy,
1559.

In 1559 was passed an *Act of Supremacy* (1 Eliz., c. 1), which restored "the ancient jurisdiction of the Crown over the estate ecclesiastical and spiritual;" the supremacy of the Queen was to be acknowledged by all ministers and officials "as well in spiritual or ecclesiastical things or causes, as temporal;" all persons upholding "the authority of any foreign prince or prelate, were to forfeit their goods for the first offence, to incur the penalties of *præmunire* for the second, and to be executed as traitors for the third."

Act of
Uniformity, 1559.

In 1559, too, was passed the *Act of Uniformity*, (1 Eliz., c. 2), confirming the revised edition of the Prayer Book issued under Edward VI., 1552, and imposing heavy penalties on those who refused to make use of the authorised service book. Attendance at Church was also made compulsory, whilst by 1 Eliz., c. 4, first-fruits and tenths were again given to the Sovereign (p. 274). In Jan., 1563, the *Thirty-nine Articles of the Church of England* were passed by Convocation,² and confirmed by Parliament 1571.

The Thirty-nine
Articles, 1563.

In 1562 a severe Act was passed against 'the

¹ Annals of England, 342.

² The original articles, forty-two in number, had been drawn up *temp.* Edward VI., 1551.

Catholics, who were again made the subjects of repressive legislation 1571, 1580, 1584, 1585, 1593; whilst the Court of High Commission (p. 50) on several occasions carried its action against them to bitter persecution. The sympathy of the Catholics with Elizabeth's rival, the Queen of Scots, and the various plots set on foot by the Jesuits, led in 1584 to the formation of the "Association for the protection of the Queen," which was authorised by Act of Parliament, (27 Eliz., c. 1.); and the formal deposition of Elizabeth by a Bull of Pius V. (1570), and the threatenings of the Spanish Armada had no other effect than to increase the rigorous treatment of the Catholics. The Nonconformist or Puritan party were, however, the subjects of an almost equal amount of persecution.

Legislation
against Roman
Catholics, 1562,
1571, 1580, 1584,
1593.

"Association for
the Protection of
Elizabeth," 1584.

Puritan
Persecution.

In 1567, after the issue of the "Advertisements" of Archbishop Parker, which "prescribed the minimum of ritual which would be tolerated," the crusade against the Puritans began, and, in spite of the efforts of such Puritan Members of Parliament as Mr. Strickland (p. 104), continued until the end of the reign, with the result that there sprang up a Puritan opposition to the State Church, and to the arbitrary government of the King, which subsequently cost Charles I. his head.

Archbishop
Parker's
"Advertisements," 1566.

Chief dates in Church History from James I.

In 1604, in consequence of the presentation to the King of the *Millenary Petition*,¹ praying for reformation in ecclesiastical matters, the *Hampton Court Conference* was held, between the Church party and the leaders of the Puritans, the Prayer Book was revised, and the authorised version of the Scriptures agreed on.

Millenary
Petition, 1604.

Hampton Court
Conference, 1604.

¹ Perry, Church Hist., ii., 290.

² So called as being supposed to bear the signatures of 1000 Puritan Clergy.

In 1641 the hatred of episcopacy, which the folly of Charles I., and the harshness of Laud and the High Commission Court (p. 50) had engendered, culminated in the exclusion of the Bishops from the House of Lords by a vote of the Commons, who at the same time endeavoured to do away with episcopacy by what was known as the *Root and Branch Bill*.

Root and Branch
Bill, 1641.

Corporation Act,
1661.

In December, 1661, was passed the *Corporation Act* (13 Car. II., st. 2, c. 1), which compelled all holders of municipal office to take "the Sacrament of the Lord's Supper according to the rites of the Church of England," and which, says Mr. Hallam, "struck at the heart of the Presbyterian party, whose strength lay in the little oligarchies of corporate towns, which directly or indirectly returned to Parliament a very large proportion of its members."¹

Third Act of
Uniformity, 1662.

In 1662 the *Act of Uniformity* (14 Car. II., c. 4) enjoined the use of the established form of the Prayer Book, compelled the Clergy to take the oath of non-resistance, and placed certain severe restrictions upon the Nonconformists.

Conventicle Act,
1664.

In 1664 the *Conventicle Act* (16 Car. II., c. 4) forbade, under heavy penalties, the assembly of Conventicles, as contrary to the Act of Uniformity.

Five Mile Act,
1665.

In the following year, by the *Five Mile Act* (17 Car. II., c. 2), Clergy, who had not taken the oath of non-resistance, were forbidden to reside within five miles of a Corporate town.

Declaration of
Indulgence,
1672.

These persecuting Statutes were abrogated for a time by the *Declaration of Indulgence*, 1672, but the Declaration itself had to be

Test Act, 1673.

withdrawn in the following year.

In 1673, the *Test Act* (25 Car. II., c. 2) compelled all holders of office to take the Sacrament in accordance with the ceremony of the English Church, and to make a declaration against transubstantiation,

¹ Const. Hist., ii., 330.

whilst in 1678, after the false evidence of the informer, Titus Oates, Catholics were declared incapable of sitting in either House of Parliament.

Catholics
debarred from
Parliament,
1678.

In 1687 James II. issued his *Declaration of Indulgence* which dispensed with (p. 167) all penal statutes against Catholics, and Nonconformists, and led to the *case of the Seven Bishops*. (*Appendix B.*)

Declaration of
Indulgence,
1687.

In May, 1689, the *Toleration Act*, the reward of the aid given to William by the Dissenters, (1 Wm. and Mary, c. 18) extended a certain amount of toleration to Nonconformists though not to Roman Catholics nor to the Unitarians; it did not, however, relax the provisions of the Test and Corporation Acts, which were not repealed until 1828.

Toleration Act,
1689.

In 1714 the *Schism Act* (13 Anne, c. 7) increased the hardships of Dissenters and Catholics, but was repealed in 1718, and from the time of George III. it became customary to pass an annual Act of Indemnity for those who held office whilst disqualified by the Corporation and Test Acts. Various attempts to remove the political disabilities of the Catholics, 1778, 1801, 1805, 1810, 1815, 1819, were frustrated, chiefly by the bigotry of George III., and it was not until 1829 that the *Catholic Emancipation Act* became law, and "admitted Roman Catholics,—on taking a new oath instead of the oath of supremacy,—to both Houses of Parliament, to all corporate offices, to all judicial offices, except in the ecclesiastical courts; and to all civil and political offices, except those of Regent, Lord Chancellor in England and Ireland, and Lord Lieutenant of Ireland."¹

Schism Act,
1714.

Catholic
Emancipation
Act, 1829.

Ecclesiastical Courts.

Up to the reign of William I. the temporal and

Ecclesiastical
Courts.

¹ May, Const. Hist., iii., 169.

spiritual Courts were united; the bishop and ealdorman sat side by side in the County Courts (p. 63), and took cognisance of ecclesiastical as well as of civil causes. William I., however, as some sort of return for the countenance of the Pope to his acquisition of England, issued an undated Charter, by which he separated the spiritual and temporal Courts,¹ ordaining at the same time that any one thrice refusing to obey the jurisdiction of the Bishop's Court should be amenable to the "strength and justice of the King or Sheriff." An attempt, made by Henry I., to re-unite the secular and spiritual Courts failed, and Stephen in his second Charter of Liberties had to declare that, "justice and power over ecclesiastical persons, and all the clergy, and their goods, and the distribution of ecclesiastical property was in the hands of the bishops." By the Constitutions of Clarendon, 1164 (*Appendix A*), the abuses, which had crept into the Ecclesiastical Courts, were regulated, and the immunity of guilty clerics from secular punishment was provided against.

In 1275 the Statute of Westminster I. ordained that clergy accused of felony were to be tried in the King's Courts, before being handed over to the ordinary, whilst the authority of the Spiritual Courts was defined and restrained by the Writ *Circumspecte Agatis*, 1285 (13 Edw. I.) Nevertheless their abuses continued, and were frequently the subject of complaint, reform in them being promised by Convocation, 1597, 1604. They took cognisance chiefly of questions of morality, the non-payment of tithes, negligence of clerical duty, and the like, punishing by fine, penances, and, in extreme cases, excommunication.

¹ See Charters, 85.

² Ib. 120.

The various Ecclesiastical Courts were—

The Commission of Delegates (pp. 43, 85), established in 1534 (25 Hen. VIII., c. 19), when it was ordered that all ecclesiastical appeals should lie to the King in Chancery, and not to Rome, as they had done up to that time in spite of the eighth article of the Constitutions of Clarendon, which declares that appeals ought to lie from the Archdeacon's Court to the Bishop's, and from the Bishop's to the Archbishop's. The Committee of Delegates of Appeal, appointed by Commission under the Great Seal, continued to form the Supreme Court of Ecclesiastical Appeal until 1832, when by 2 and 3 Wm. IV., the power was vested in the Judicial Committee of the Privy Council.

Commission of Delegates, established, 1534.

The Court of Arches, so called as being originally held in the Church of St. Mary-le-Bow (*Sancta Maria de Arcubus*),¹ is a Court of Appeal from the inferior Ecclesiastical Courts, and is presided over by the Dean of Arches, the deputy of the Archbishop of Canterbury. By what are known as *Letters of Request*, Bishops can remove causes from their Courts to the *Court of Arches*, provided the Dean of Arches be willing.

Court of Arches.

Letters of Request.

The Court of Peculiars, an offshoot of the *Court of Arches*, having jurisdiction "over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the Ordinary's jurisdiction, and subject to the Metropolitan only."

Court of Peculiars.

The Prerogative Courts, in which testamentary causes were tried before a judge appointed by either Archbishop. In 1857 the jurisdiction of these Courts passed to the Court of Probate.

Prerogative Courts.

The Consistory Courts of the various Bishops,

Consistory Courts.

¹ Blackstone.

Ib.

held before the Bishop's Chancellor, and taking cognisance of ecclesiastical causes arising in the diocese. It was in these Courts that the perversion of justice, so frequently complained of, usually took place, *e.g.*, the case of *Richard Hunne*, persecuted to death, 1514, for refusing to recognise the authority of the Bishop's Court. (*See also* High Commission Court (p. 50); Benefit of Clergy (p. 77.)

Court of the
Archdeacon.

The Court of the Archdeacon, the lowest Ecclesiastical Court, presided over by the Archdeacon, or a judge appointed by him. From these Courts an appeal lies to the Bishop's Court.

Statutes
regulating
Ecclesiastical
Courts.

The Ecclesiastical Courts were regulated by Statute 1689, 1813, 1829, 1833, 1840, and 1857, in which latter year the Courts of Probate and Divorce were established.

Convocation.

Convocation. Whilst ecclesiastical business was frequently transacted at the Witenagemot before the Norman Conquest, there yet occur instances of purely ecclesiastical synods such as at Hertford, 673, Cloveshoo, 747, and Calchythe, 787, but, up to the reign of Henry III., the history of the Church assemblies is vague. By John, and Henry III., aids were frequently exacted from the Clergy (*e.g.*, 1212, 1254); by the time of Edward I., a system of representation in ecclesiastical Councils had been established, *e.g.*, in 1277 the Clergy are represented in Convocation by their proctors,¹ who had appeared before on several occasions, notably in 1255, and 1273. In 1294, an assembly of Clergy met at Westminster, at the summons of Edward I., the Deans, Archdeacons, and Proctors being present; in the following year, 1295, the inferior Clergy appeared at the regular Parliament, sum-

The Clergy in
Parliament.

¹ *Sel. Charters*, 455.

moned by what is known as the *præmunientes* clause, which warned the Archbishops to require the attendance of the Priors of Cathedrals, Archdeacons, and Proctors for the chapters and diocesan Clergy. Attendance in Parliament was, however, never popular with the clergy, who preferred to grant taxes in their own peculiar assembly or Convocation, and who have never been present since the end of the fourteenth century, although regularly summoned by the *præmunientes* clause. Convocations continued to be held, more or less in correspondence with the Parliaments, for the purpose of granting aids, or of framing ecclesiastical legislation. In 1534, however, by 25 Hen. VIII., c. 19, all enactments made in Convocation were declared invalid, unless they received the King's consent; from this reign too all clerical grants were confirmed by Parliament, until in 1663, the right of Convocation to tax itself was surrendered by a verbal agreement between Lord Clarendon and Archbishop Sheldon, the Clergy being thenceforward taxed in the ordinary way in Parliament.

Præmunientes
Clause.

Legislative
power of
Convocation
taken away,
1534.

Powers of
taxation
surrendered
1663.

Convocation, which is summoned by the writ of Its Composition. the Sovereign to the Archbishop, at the commencement of every fresh Parliament, consists of two assemblies, which have remained unaltered in their constitution from the reign of Edward I., one for the province of Canterbury, the other for that of York.¹ The Convocation of Canterbury has two Houses, the Upper one consisting of the Archbishops and Bishops, and the Lower, of Deans, Archdeacons, and Proctors (one for each Cathedral Chapter, and two for the Clergy of each Diocese). The Convocation of York is, in the same way,

¹ The Convocation of York has always been far inferior in importance to that of Canterbury.

composed of two Houses, which, however, sit together.*

History from
Edward I.

Under Edward I. Convocation came into frequent collision with the King on the subject of taxation, though it invariably had to yield. By an Act of 1429 (8 Hen. VI.), the clergy attending Convocation were granted immunity from arrest, in the same way as members of Parliament (p. 100). In 1529 a petition was presented to Henry VIII. by Convocation, demanding the fulfilment of certain privileges, and declaring that "Parliament ran great risk of sin in passing any Statute which touched clerical liberties, without first consulting the clergy in their Convocations.¹" Shortly afterwards, however (1531), Convocation was compelled by the action of the King, in declaring the clergy subject to the penalties of *præmunire* (p. 271, note 1), to acknowledge the royal supremacy, and in 1534 an Act was passed (25 Hen. VIII., c. 19), declaring all legislation in Convocation void until it had received the King's assent. From this time its business was chiefly to decide questions of ritual and doctrine, *e.g.*, in 1548 it agreed to a reformed version of the Church service, and in the same year sanctioned the marriage of the clergy. In 1552 it agreed to a second version of the Prayer Book, and in the following year passed the Forty-two Articles. In 1563 it confirmed the Thirty-nine Articles, at the same time laying some Canons before the Queen. In 1571 it issued more Canons, and in 1576 it passed certain Articles with regard to Church discipline; in 1585 it drew up some fresh Canons at the instance of Archbishop Sandys, and in 1597 promised reform in the Ecclesiastical Courts, whilst in the same year it granted the

Acknowledges
the Royal
Supremacy,
1534.

Forty-two
Articles, 1553.
Thirty-nine
Articles, 1563.

Canons of 1571.

1576.

1585.

¹ Perry, Church Hist., ii., 69.

Queen a Benevolence (p. 193). In 1604 the famous ^{1604.} Canons of Bishop Bancroft were issued, inveighing against the Puritans, and regulating Church discipline, and ritual; these Canons, however, did not receive the consent of Parliament, and are in consequence not binding on any but the clergy.

In 1640 Charles I. empowered Convocation to pass Canons, although the outbreak of the Civil War prevented any material result; in 1661 Convocation revised the Prayer Book, by order of the King, and, two years later, surrendered its right of taxation by a verbal agreement between the Chancellor Clarendon and Archbishop Sheldon. At the time of the Revolution of 1688, an attempt was made to revive the power of Convocation,¹ which, *temp.* Anne, proved itself unusually active.

Right of taxation
surrendered by
Convocation,
1663.

In 1717, in consequence of the *Bangorian Controversy*, (a quarrel between the Upper and Lower Houses of Convocation on the subject of a sermon preached by Hoadley, Bishop of Bangor), Convocation was prorogued, and was not allowed to sit again for the transaction of business until 1850. "To this gross outrage on the Church of England," says Mr. Perry,² "most of the mischiefs and scandals which impeded her progress during the eighteenth century are distinctly to be traced. The Church, denied the power of expressing her wants and grievances, and of that assertion of herself in her corporate capacity which the constitution had provided for her, was assaulted at their will by unscrupulous Ministers of the Crown, and feebly defended by Latitudinarian bishops in an uncongenial assembly."

Bangorian
Controversy,
1717.

Convocation
ceases to transact
business, 1717—
1850.

Since 1850 Convocation has resumed its sittings, and in 1861 framed a new Canon on the subject of

Legislation in
Convocation,
1861.

¹ Hallam, *Const. Hist.*, iii., 244.

² *Church Hist.*, ii., 585.

1872.

Sponsors, whilst in 1872 it drew up the Bill, subsequently passed by Parliament as the Act of Uniformity Amendment Act.

Summary of
dates.

Summary of the Chief Dates in Church History.

Conversion of England to Christianity, 597 (p. 261).

Separation of the Ecclesiastical and Temporal Courts *temp.* William I. (Sel. Charters, 85) (p. 263).

The Contest about Investitures, 1103 (p. 264).

Constitutions of Clarendon, 1164 (Appendix A.).

Annates first claimed in England, 1256 (p. 273).

First Statute of Mortmain or *de viris religiosis*, 1279 (p. 268).

Statute of Carlisle, 1307 (p. 269).

First Statute of *Provisors*, 1351 (p. 270).

First Statute of *Præmunire*, 1353 (p. 270).

Second Statute of *Provisors*, 1390 (p. 271).

Second Statute of *Mortmain*, 1391 (p. 271).

Second Statute of *Præmunire*, 1393 (p. 271).

Statute *de heretico comburendo*, 1401 (p. 272).

The Reformation Parliament, 1529—1536 (p. 155).

Appeals to Rome forbidden, 1532 (p. 273).

Payment of *Annates* forbidden, 1534 (p. 274).

First Act of Supremacy, 1534 (p. 274).

Dissolution of the Smaller Monasteries, 1536 (p. 274).

Dissolution of the Larger Monasteries, 1539 (p. 275).

Act of Six Articles, 1539 (p. 275).

Second Act of Supremacy, 1559 (p. 276).

Act of Uniformity, 1559 (p. 276).

The Thirty-nine Articles issued, 1563 (p. 276).

Establishment of the Court of High Commission, 1583 (p. 50).

The Hampton Court Conference, 1604 (p. 277).

Exclusion of the Bishops from the House of Lords, 1642 (p. 123).

Corporation Act, 1661 (p. 278).

Second Act of Uniformity, 1662 (p. 278).

Conventicle Act, 1664 (p. 278).

Five Mile Act, 1665 (p. 278).

First Declaration of Indulgence, 1672, withdrawn 1673 (p. 278).

Catholics debarred from Parliament, 1678 (p. 279).

Second Declaration of Indulgence, 1687 (p. 166).

Toleration Act, 1689 (p. 279).

Schism Act, 1714 (p. 279).

Convocation ceases to sit, 1717—1850 (p. 285).

Catholic Emancipation Act, 1829 (p. 279).

CHAPTER X.

THE DEFENCES OF THE REALM.

The Fyrd in Anglo-Saxon times.

The Fyrd, or Anglo-Saxon Militia, was the only body of men available for the defence of the country, up to the Norman Conquest. In the earliest times military service was incumbent on every individual as part of the whole community, and the organisation of the force was based on the idea of clanship.¹ With the growth of territorial power, however, military service became connected with land, and every allodial proprietor became liable to the *trinoda necessitas*, consisting in the duty (1) of repairing bridges, (2) of keeping up fortifications, (3) of the *fyrd*; by degrees the composition of the Anglo-Saxon army grew more aristocratic, to the exclusion of the poorer freemen, who tended to lay aside their liability to military service by becoming *socage* tenants (p. 205), or by transferring the duty on their land to some lord by the process of commendation (p. 201); similarly we find towns compounding for military service by a money payment, or fine, *e.g.*, Oxford paid £20 instead of sending twenty men, and Colchester paid a tax of 6d. a hearth for total exemption.

Trinoda necessitas.

Fyrdwite.

The *Fyrdwite* or penalty for neglecting to attend, was, for a landowner, forfeiture, and a fine of 120 shillings; for a landless man, 60 shillings, and for a ceorl, 30 shillings,² whilst returning from the *fyrd* without leave was likewise punishable.³

¹ "The host was originally the people in arms."—Stubbs, *Const. Hist.*, i., 189.

² Laws of Ini, c. 51, *Sel. Charters*.—62. Laws of Henry I., lxvi., c. 6, *Sel. Charters*.—107.

³ Laws of Ethelred, c. 28.—*Sel. Charters*, 73.

The Anglo-Saxon *fyrð*, which was led by the Ealdormen of the Counties, and later by the Earls, (the *hundred's ealdor* being at the head of the men of his *hundred*), found plenty of occupation in defending England against the Danes, though their success in arms was often marred either by the jealousy of the various counties¹, or by the desire evinced to disband immediately the battle had been fought. In the Statutes of William I., c. 2,² every freeman has to swear to be faithful to the King, both in England and out of it, and to defend him against his enemies. The *fyrð*, which was summoned by the Sheriffs, continued to exist after the Norman Conquest, side by side with the *feudal array*, (p. 291), but was employed for defensive purposes only.

Jealousy of the Counties.

To Alfred the Great is due the introduction of a distinct military policy; he established a register of the forces, and ordered a regular routine of duty, dividing part of his troops into garrisons, holding part in immediate readiness for action, and keeping part as a reserve. Edgar also maintained in the north of England a disciplined body of troops to repel the inroads of the Scotch.

In 1094, however, William II. ordered 20,000 of the National Militia to be sent to Normandy as auxiliaries; on their arrival at Hastings, the troops were deprived of "the money which had been given them for provisions, *i.e.*, ten shillings each," by Ralph Flambard, acting under the King's orders, and were left to make the best of their way home again.³ In spite of occasional good service rendered

After the Norman Conquest

National Levy.

¹ It occasionally happened that the Ealdorman of one County would bribe the Danes to ravage another County instead of his own.

² Sel. Charters, 83.

³ Ib. 93. *Flor. Wig.*, 1094.

Battle of the
Standard, 1138.

Battle of
Alnwick, 1174.
Assize of Arms,
1181.

Statute of
Winchester,
1285.

Later Militia.

Lords
Lieutenant.
Trained Bands.

Statutes
regulating the
Militia.

by the National Militia, (*e.g.*, when led by Archbishop Thurstan it defeated the Scotch army under David at the battle of Northallerton, or the Standard, 1138, and when it defeated and captured William the Lion, of Scotland, at Alnwick, 1174), it fell into disuse, until revived by the Assize of Arms, 1181 (p. 303), a measure which Henry II. found necessary, owing to the hatred with which his mercenary troops were regarded by the people. By this Assize all knights and freemen generally were to equip themselves according to their wealth, which was to be assessed by sworn jurors before the Justices in *Eyre*; in 1205, 1217, and 1231, writs were issued for the levy of the *fyrð*, whilst in 1252 the Assize of Arms was confirmed. In 1285 the Statute of Winchester carried still further the provisions of the Assize of Arms as to equipment.

By degrees the *fyrð*, or national force, developed into the *Militia*, which, by an Act of 1327, was not to serve out of its own County, except when necessity required.

In 1558 a Statute was passed to regulate the militia, which was placed under the command of the Lords Lieutenant, whilst *temp.* James I. the militia became the *Trained Bands*. In 1642 arose the great quarrel between Charles I. and his Parliament as to the command of the militia, which was claimed by the Commons; the result was the outbreak of the war; and a Statute was passed, vesting the appointment of the Lords Lieutenant, and the command of the militia, in Parliament; in 1661, however (13 Car. II.), the command of the militia was declared to be vested in the Crown. Statutes regulating the militia were passed 1662, 1663, 1690, and in 1757, (30 Geo. II., c. 25), it was ordained

that men were to be balloted for, whilst the organisation of the force was altered. These Acts were amended and consolidated 1761, 1786 and 1802. Since 1829 it has been customary to pass an annual Act, doing away with the ballot; in 1854 the militia were declared eligible, under certain circumstances, to serve out of the kingdom. In 1871 the authority over the auxiliary forces was taken away from the Lords Lieutenant, and vested in the Crown.

The Feudal Levy, which was a result of the Norman Conquest, was raised by the obligation of those holding by feudal tenure to military service. A mounted and fully equipped man-at-arms, liable to serve for forty days, had to be furnished for every knight's fee (p. 203).

Under Henry II., 1159, arose the custom of allowing those liable to military service to commute that service by the payment of a tax called *scutage* (p. 181); by this means the King was enabled to pay mercenaries (*see below*), and to strike a blow at the overweening power of the great landowners, whose vassals were, whilst in the field, often more amenable to their lord's orders than to those of the King. The feudal array, which was almost entirely composed of cavalry, and which was summoned by writs addressed to the more powerful tenants-in-chief, and to the sheriffs, gradually tended to coalesce with the National Militia, and from the time of Edward I., the two are hardly distinguishable. The feudal array did not, however, cease to exist until the abolition of feudal tenures (p. 204), 1660.

The issuing of *Commissions of Array*, which originated under Edward I., was a system of authorising certain Commissioners to raise so

Ballot.

Feudal Levy.

Commutation of
Service by
Scutage, 1159.Feudal Array
and National
Militia coalesce,
temp. Edw. I.Commissions of
Array, *temp.*
Edw. I.

many men from each County for offensive warfare. The Commissioners, however, abused the power they possessed, and frequently acted in a most oppressive manner by requiring unreasonable equipment and service. The abuse was the subject of frequent petitions of the Commons, more especially *temp.* Edward III., and in 1404, it was found necessary to settle the form of the Commission by Act of Parliament. Commissions of Array fell into disuse in the reign of Elizabeth.

Mercenaries.

Mercenaries, (*solidarii*, soldiers), were first employed by the Norman Kings, who found the feudal array useless in their foreign wars, owing to the short period the tenants were bound to serve (forty days). Stephen, in his wars in England, had an army composed almost entirely of mercenaries (Flemings), who did great damage to the country, and were so unpopular in England that a distinct clause in the Treaty of Wallingford, made between Stephen and Henry II. (1153), bargained for their removal from the country. Henry, however, found it necessary to employ mercenaries in his foreign wars, paying them by means of the *scutage* (p. 181), and foreign soldiers were largely employed by John, who, in the 51st Article of Magna Carta, was compelled to promise the immediate removal from the realm of "all foreign knights, bowmen, officers, and mercenaries." From this time, mercenaries were seldom employed in England.

Standing Army.

Huscarls of
Canute.

Yeomen of the
Guard, 1485.

Standing Army, the germ of which may be traced in England in the 3000 *huscarls*, or body guards, of Canute and the Danish Kings, and in the later Yeomen of the Guard of Henry VII. and the other Tudor sovereigns, first assumed a tangible form during the civil wars of Charles I. and the Parliament. Up to that time armies, collected and

paid by the King for offensive warfare, were disbanded as soon as their services were no longer required, but in 1645, the Parliamentary Army was organised on a new basis, whilst in 1653, the "Instrument of Government" decreed the existence of a standing army of 30,000 men. Always unpopular with the nation, this army was disbanded at the Restoration; 5,000 men, consisting of the Coldstream regiment, which had been raised by Monk, a cavalry regiment, and one other regiment, being alone retained as "Guards."

Instrument of Government, 1653, decrees a Standing Army.

Army after the Restoration, 1660.

In spite of Parliamentary opposition,¹ the numbers of this little army increased rapidly, and, such was the dread of the nation, that it was expressly declared by the Bill of Rights, 1689, that "the raising, or keeping, a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law." It was not, however, until towards the end of the 18th century that the nation became familiarised with the idea of a standing army; and the feeling of Parliament was often exhibited, *e.g.*, 1731 all troops were forbidden to come within two miles of any town, not being a garrison town, during an election, whilst in 1741, the aid of troops to quell an election riot at Westminster was stigmatized as "a high infringement of the liberties of the subject, a manifest violation of the freedom of elections, and an open defiance of the laws and constitutions of this kingdom."

Bill of Rights declares the consent of Parliament necessary.

The Mutiny Act, passed annually since April, 1689, with the exception of the years 1697—1702, has force for one year only, and provides for the maintenance of a standing army and the discipline of

The Mutiny Act, first passed, 1689.

¹ See the charge against Lord Clarendon of having advised the raising of a standing army (p. 149).

Articles of War.

Army Discipline Act, 1879.

Martial Law.

Arbitrary employment of Martial Law, *temp.* Elizabeth.

Declared illegal by the Petition of Right, 1628.

the soldiers ; it corresponds in many of its clauses to the *Articles of War*, (dating from Charles II.), which were revised and codified by the Army Discipline Act of 1879. The Mutiny Act is of the highest constitutional interest ; by being passed for one year only, it is a guarantee for an annual Session of Parliament, whilst, by refusing to re-enact it, Parliament could at once put an end to all military power.

Martial Law, or law enforced by military courts, can be proclaimed by Parliament in districts where rebellions or disorders are rife¹ ; it entirely supercedes for the time the civil power, and is in fact "absolutely discretionary military authority."

Under the Tudors, after the Court of Chivalry (p. 59) had fallen into disuse, Martial law was occasionally employed, *e.g.*, the rebels who took part in Sir Thomas Wyatt's insurrection, 1554, were executed by Martial law. There are several instances of its arbitrary employment *temp.* Elizabeth, who, but for the opposition of her Council, would have had Peter Burchell, the fanatic assailant of Sir John Hawkins, tried by Martial law. In 1588, those who brought Papal Bulls into England were declared subject to Martial law, and in 1595, Sir Thomas Wilford was appointed Provost Marshal of London and directed to capture and execute by Martial law "notorious and incorrigible rioters and vagrants." The arbitrary trial of offenders, who were often civilians as well as soldiers, led *temp.* Charles I., to Martial law being pronounced illegal by the Petition of Right, 1628, which also declared

¹ Martial law can only be proclaimed in time of war or rebellion. "Wherefore," says Blackstone, "Thomas, Earl of Lancaster, being condemned at Pontefract, 15 Edward II., by Martial law, his attainder was reversed, 1 Edward III., because it was done in time of Peace."

that billeting soldiers in private houses was an in- Billeting.
fringement of the Liberty of the subject (pp. 232, sq.)

Impressment, (a) for the army, was forbidden as Impressment for the Army.
early as 1327, when a Statute was passed against compulsory service. This was confirmed in 1352, 1403, and finally in 1641, when it was enacted that "by the law of this realm none of His Majesty's subjects ought to be impressed, or compelled to go out of his country, to serve as a soldier in the wars, except in case of necessity by the coming in of strange enemies into the kingdom, or except they be otherwise bound by the tenure of their lands or possessions." During the American War, Parliament sanctioned 1779 (19 George III., c. 10) the impressment of all "idle and disorderly persons."

(b) For the Navy, which is a prerogative of the Impressment for the Navy.
Crown, has often been sanctioned and regulated by Parliament, e.g., 1378 (2 Richard II.), 1555 (2 & 3 Philip and Mary), 1562 (5 Elizabeth), 1696 (7 & 8 William III., c. 21), 1703, 1705, 1740 (13 Geo. II., cc. 17, 28), and even as lately as 1810 and 1836. It was regarded as a necessary means of obtaining sufficient sailors to man the vessels, and, in time of war, led to great oppression and hardships. Liability to impressment for the Navy only extended to seafaring men, though no very distinct rule was laid down as to what brought a man within that category.

Chief Dates in the History of the Army.

Huscarls, or body-guard, introduced by Canute, Chief dates in the history of the Army.
circ. 1020.

The Militia win the Battle of the Standard, 1138.

• The Militia win the Battle of Alnwick, 1174.

The Assize of Arms, 1181.

The Statute of Winchester, 1285.

Yeomen of the Guard created by Henry VII.,
1485.

Martial law forbidden, 1628.

First Standing Army (Parliamentary), 1645.

This Army disbanded and re-organised, 1660.

A Standing Army, maintained without the consent of Parliament, declared illegal by the Bill of Rights, 1689.

The First Mutiny Act, 1689 (renewed annually ever since, with the exception of 1697—1702).

Re-organisation of the Militia, 1757, 1803.

Establishment of a Volunteer Force, 1859.

Abolition of Purchase, 1871.

The direct power over the Auxiliary Forces resumed by the Crown, 1871.

The Army Discipline Act, 1879.

The Navy. *The Navy* was first organised by Alfred the Great to defend the coasts against the Danes. In 882, he collected some ships and defeated the Danes with a fleet chiefly manned by Frisian sailors; in 897 he collected a fresh supply of ships, of which we are told, that "some had sixty oars, some more, they were both swifter and steadier, and even higher than the others; they were neither on the Frisian shape, nor on the Danish, but as he himself thought that they might useful be." The fleet was maintained in some efficiency by Athelstan, and by Edgar, who is said to have possessed ships varying (according to the different accounts of the Chroniclers) from 3000 to thirty. In Edgar's reign occurs a grant of three *hundreds* to the Bishop of Worcester, taxed with the duty of providing one ship for the National service. In 1008, Ethelred, who is said to have maintained a larger fleet than any of his predecessors, ordained that every 300 hides of land should furnish a ship (p. 181). Ethelred's plans for destroying the Danish fleet were, however, frustrated by the treachery of Edric

Streona; and, that England's Navy had made in reality but little progress, is proved by the fact that, in 1066, the country was invaded by two armies of Danes and Normans, both of which landed without meeting with any opposition on the sea. By William I., however, a large fleet was kept up, the ships being provided by the great feudal landowners; the Cinque Ports also had to furnish a certain number of ships and mariners (p. 215), and for long formed a large proportion of the English Navy. *Temp. William I.*

The growing importance attached to the Navy is shown in the Assize of Arms¹, 1181, the twelfth Article of which forbids the sale of any ship, or ship's timber, for the purpose of being taken out of England. This provision was confirmed by the Statute of Winchester, 1285, which forbids the destruction of oaks, and large trees.² *Temp. Richard I.*, the Navy had attained some degree of organisation, and regulations were framed for the maintenance of discipline in the fleet. By John a fleet of hired vessels was maintained, but under the strong hand of Edward I. the Navy was thoroughly re-organised; an Admiral of the fleet was appointed, and with him were associated various commanders, the crews being filled up by impressment. The result of this organisation appeared in the victory of Sluys, 1340, and in the Siege of Calais. Edward III. also established the Admiralty Court.³ *Assize of Arms, 1181. Statute of Winchester, 1285. Temp. Richard I. Temp. John. Temp. Edward I. Victory of Sluys, 1340.*

Under the Lancastrian Kings, and more especially the fostering care of the warlike Henry V., the Navy grew rapidly in size and organisation. It is not, however, until 1512, that the Navy can be *Temp. Henry V. Temp. Henry VIII.*

¹ Sel. Charters, 156.

² Ib. 474.

³ The Admiralty Court is held by some writers not to have existed before Richard II.'s reign.

said to have existed in its modern form of a distinct service, and that it lost its character of a force raised locally, as from the Cinque Ports. From this time a series of *Navigation Acts* began to be passed. In 1540 the rates of freight were regulated, and in 1559 another Act was passed on the same subject; in 1563 (5 Elizabeth, c. 5) English ships were declared to have a monopoly of the Coasting trade. In 1651, a Navigation Act was passed by the Long Parliament, and subsequently confirmed with some alterations in 1660 (12 Car. II., c. 18). Its aim was to deprive the Dutch of the carrying trade of Europe, and to restrict trading to English ships; and it forbade goods to be brought to England except by the ships of the country where the said goods were manufactured, or by English ships.¹ This Act remained in force until the repeal of the Navigation Laws, 1849. In 1661, an Act was passed for the regulation of the Navy, and in 1749 the Articles of the Navy were promulgated.

The Navigation Laws were amended and altered 1822, 1825, 1833, and abolished 1849. In 1854 was passed the Merchant Shipping Act, throwing open the Coasting trade, with the provision that the owners of English vessels must be English; in 1866 was passed the Navy Discipline Act.

Navigation
Laws amended,
1822, 1825, 1833.
Abolished, 1849.
Merchant
Shipping Act,
1854.

Navy Discipline
Act, 1866.

¹ There had been considerable jealousy between the English and the Dutch for some time past, and Grotius, in his *Mare Liberum*, disputed the claim of England to rule the narrow seas; England's right was upheld by Selden in his *Mare Clausum*, published, 1635.

APPENDIX A.

A SUMMARY OF SOME OF THE MORE IMPORTANT CHARTERS, ASSIZES, AND STATUTES RELATING TO CONSTITUTIONAL HISTORY.

CHARTER OF LIBERTIES, *issued by Henry I. at his coronation at London, August, 1100.*

Consists of fourteen Articles, on which *Magna Carta* (p. 304) is mainly founded.

1. The Church to be free; and all evil customs to be abolished. (*See Magna Carta, Article 1.*)

2. Reliefs to be just and lawful, both to the King's barons, and to his barons' men. (*M. C., 2.*)

3. Barons, or other of the King's men, to give their daughters in marriage to whom they please, except to an enemy of the King. Widows not to be given in marriage against their will. (*M. C., 8.*)

4. The guardian of the land and children of a deceased baron to be the wife, or some other of the relatives who should be more justly; and the tenants-in-chief to act similarly towards the children and wives of their men.

5. The common mintage not existing in the time of Edward the Confessor henceforward forbidden. Any coiner or other person found with false money to be brought to justice (pp. 174, sq.)

6. All pleas and debts owed to William II. are remitted, "except the King's just *ferms*, and those which had been agreed upon for the inheritances of others, or for those things which more justly belonged to others."

7. Testamentary disposition not to be interfered with; the property of an intestate to be divided "by his wife, or children, or relatives, or lawful men, as shall seem to them best." (*M. C., 27.*)

8. Fines for forfeiture to be according to the measure of the forfeiture, not as in William's time. Fines for treason and felony to be just. (*M. C., 20.*)

9. Murders committed before the King's coronation are pardoned; those committed since to be punished according to the law of Edward the Confessor.

10. The King retains the forests, as his father had them, with the common consent of his barons (pp. 177, sq.)

11. Holders of land by knight-service have their demesne arable land free from taxes, but they must in return equip themselves well

with chargers and weapons for the King's service, and for the defence of his realm.

12. The King's peace to be kept henceforward throughout the country.

13. The law of Edward is given back, together with those amendments made by William I. with the consent of his barons.

14. Any one who has taken any of the King's or any one's possessions, after the death of William II., to make full restitution under heavy penalties.

FIRST CHARTER OF STEPHEN; *probably at his coronation, Dec. 26th, 1135.*

Confirms all the liberties and good laws of Henry I. and Edward the Confessor, and forbids any interference with them.

SECOND CHARTER OF STEPHEN, *issued at Oxford, 1136.*

Church. Jurisdiction over ecclesiastics to be in the power of the Bishop; dignities and customs of the Church to remain inviolate; possessions and tenures of the Church confirmed. Ecclesiastics to be allowed to devise their goods by will; if they die intestate, their property to be distributed as seems good to the Church. Vacant sees to be in the custody of clergy, or honest men of the same Church, until a pastor is appointed.

Forests made by William I. and William II. given up, those made by Henry retained (pp. 177, sq.)

All exactions to be done away with; good laws, and ancient and just customs confirmed, *saving the King's royal and just dignity.*

(This clause, which does not appear in any other Charter, was inserted owing to the King's secret knowledge of his weakness.)

CHARTER OF HENRY II., *issued at his coronation, Dec., 1154.*

Confirms the Charter of Henry I., and abolishes all bad customs done away with by that King.

CONSTITUTIONS OF CLARENDON, *issued at Clarendon, near Salisbury, January, 1164.*

Summary:

1. Disputes as to advowsons and presentations to be decided in the King's Court.

2. Churches in the King's fee not to be granted in perpetuity without his consent.

3. Clergy, accused, to answer in the King's Court, unless the case is sent to the Ecclesiastical Court by the King's Judge; if convicted, the Church is not to protect them.

4. No Clerk to leave the kingdom without the King's license, and without giving a pledge not to prejudice the interests of the kingdom.

6. If a powerful layman is charged, and no one dare accuse him, the Sheriff, at the Bishop's request, is to empanel twelve lawful men to give testimony according to their conscience.

7. No tenant-in-chief, or King's officer, to be excommunicated without the King's leave.

8. Appeals to lie from Archdeacon to Bishop, from Bishop to Archbishop, and finally to the King.

9. Disputes between the Clergy and Laity, as to the tenure of land, to be decided by the Chief Justice on the recognition of twelve lawful men.

10. Persons refusing to appear before the Ecclesiastical Court may be put under interdict, but not excommunicated without the King's leave.

11. The Clergy, holding of the King *in capite*, are subject to all baronial duties.

12. The King to have the custody and revenues of vacant Sees. Elections to bishoprics to be made by the principal beneficed clergy of the Church in the King's Chapel with the assent of the King, and the advice of the beneficed clergy of the realm.

14. Church not to detain the chattels of those in the King's forfeiture.

15. King's Court to have jurisdiction over all pleas of debts.

16. Sons of villeins not to be ordained without the consent of the lord.

ASSIZE OF CLARENDON, 1166.

Deals with questions of justice, and lays down directions for the Justices in Eyre, for the formation of juries, and the like. Twenty-one Articles.

1. Inquests to be held by twelve lawful men of each hundred, and by four lawful men of each township; and all robbers, murderers, thieves, and their harbourers, to be presented.

2. Criminals so presented to go to the ordeal of water.

4. If a judicial circuit is not imminent, notice to be given to the nearest Justice when a criminal has been captured; and the accused to be brought before the Justices at their convenience by the Sheriffs, with two lawful men from the hundred or township declaring the finding of the place where the criminal was taken.

6. Sheriffs to receive criminals without delay.

7. Provides for the building of gaols.

8. All to come to the courts to make oath. No man to refuse on account of any liberty, court, or *soe* he may have.

9. All to lie in a frankpledge; no one to obstruct the Sheriff.

10. In cities and towns, all who harbour strangers are to be responsible for them.

11. No one to obstruct the Sheriffs in the execution of their duty.

12. A man of ill repute possessed of stolen profits, if he has no surety, is to have no law, and is to be sent to the ordeal by water, if not already condemned by public report.

13. Statements of guilt made before lawful men, not to be withdrawn.

14. Men of ill repute to leave the country.

15. 16. No vagrant or stranger to lodge anywhere except in a town, and to remain there only one night, unless his horse be sick.

17. Sheriffs to take criminals escaped from other counties, when warned of their offence.

18. Sheriffs to keep a list of those who have fled their counties.

19. Sheriffs to appear, as soon as summoned, with their counties before the Justices in Eyre.

20. None of the common people to be received as a monk, until the circumstances of his case are known.

21. The Renegades, excommunicated at Oxford, are not to be received by any one.

22. This Assize to hold good during the King's pleasure.

INQUEST OF SHERIFFS, 1170.

This inquiry was held by travelling barons, in consequence of the many complaints made to the King about the exactions of the Sheriffs. After strict investigation many Sheriffs were dismissed. Thirteen Articles.

1. Inquiry to be made from the Sheriffs, and their bailiffs, how much they have received from every hundred and township, and from every man; and what they have received by the judgment of the county or hundred, and what without.

2. Inquiry to be made as to what the prelates and magnates have received for their lands from each of their hundreds, townships, and men.

3. Inquiry to be made from those who have had the custody of other bailiwicks of the King.

4. And from the King's bailiffs what has been given them, and what they have demanded.

5. The chattels of those who have fled, or been convicted by the Assize of Clarendon, to be enquired into and enrolled. And inquest to be made whether any one has been wrongfully accused for gain or malice, or whether any criminal has been released for money.

6. Inquiry into the aids for marrying the King's daughter, what was paid, and to whom, from each hundred and township.

7. Into the receipts of the foresters and bailiffs, and into the forfeitures of the forests.

8. All accused persons to give bail for their appearance, or to go to prison.

9. Inquiry as to whether the Sheriffs, or bailiffs, have received anything as hushmoney.

10. Or whether any one has been released for money, or through favour.

11. A list to be made of those who owe homage and have not paid it.

12. Inquiry to be made as to the state of repair of the King's demesne.

13. Sheriffs and bailiffs to swear that they will lawfully attend to the inquest to be made on the barons' lands.

ASSIZE OF NORTHAMPTON, 1176.

Contains thirteen Articles, concerned chiefly with the regulation of the Judicial Courts and business, and with the maintenance of peace.

1. Any one presented to the Justices by the oath of twelve knights of the hundred, or of twelve lawful freemen, for murder, robbery, arson, or forgery, is to go to the ordeal of water, and to lose a foot if convicted. If he be acquitted he may remain in the country on finding sureties, unless he had been charged with murder, or other disgraceful felony, in which case he is to quit the realm within forty days.

2. No one in any borough or town is to give lodging to a stranger for more than one night without good reason. When the stranger goes, he must go openly.

3. Any one taken in the act of committing a felony, and confessing his guilt, cannot plead not guilty before the Justices.

4. When a freeholder dies, his heirs are to remain in the same possession as their father held at the day of his death. If the lord of the fee disputes the seisin, a recognition shall be taken by twelve lawful men. (*Mort d'ancestor*, p. 83.)

5. The Justices shall also cause a recognition to be made concerning dispossessions. (*Novel disseisin*, p. 83.)

6. Fealty to be taken from earls, barons, knights, free tenants, and even rustics, who wish to remain in the country. Homage to be paid to the King by all who have not already done so.

7. All dues and rights, which belong to the King, are to be exacted by the Justices from half a knight's fee and under, unless the matter is too great to be settled without the King. The Judges are to do all they can for the advantage of the King.

8. They are to provide for the demolition of castles, under penalty of being proceeded against.

9. To make enquiry concerning escheats, churches, and land in the gift of the King.

10. The King's bailiffs are to answer to the Exchequer for all perquisites in their charge, except those belonging to the Sheriffs.

11. Inquiries to be made as to the Keepers of Castles.

12. A thief is to be given into the Sheriff's custody, when caught, or to the nearest Castellan if the Sheriff is absent.

13. People who have quitted the realm to be sought for, and if they refuse to return, and to stand at right in the King's Court, to be outlawed.

ASSIZE OF ARMS, 1181.

1. 2. 3. Regulate the arms to be provided, according to position and income.

4. Fealty to be sworn to, and the arms kept for the service of, the King. No arms to be parted with on any pretext.

5. Arms on the death of a possessor to go to the heir; if a minor, to be kept in ward for him.

6. No one need keep more arms than are required by this Assize.

7. No Jew to keep arms.

8. No one to take arms out of England except with the King's leave.

9. *Most important Article.* The assessment to be made by lawful knights, and lawful men of hundreds and towns.

12. No one shall buy or sell any ships out of England. No timber to be taken out of England (p. 297).

ASSIZE OF WOODSTOCK (or the Forest), 1184.

1. No one to trespass on the King's hunting, or forests, under the penalties laid down by Henry I.

2. No one to have bows, arrows, or dogs in the King's forests without a warrant.

3. Nothing except firewood, (*estoveria*), to be taken from the woods, and that with the cognisance of the forester.

4. Provides for the appointment of qualified and proper foresters.

6. Foresters to take an oath that they will act energetically and judiciously.

7. When the King has hunting in a county, twelve knights to be appointed to keep his venison and vert (p. 59), and four knights for *agisting* the woods (*i.e.*, turning cattle into them) and for receiving *pannage* (*i.e.*, privilege of feeding swine).

9. Clerics not to trespass with impunity. (*See Constitutions of Clarendon*, p. 300).

10. The King's clearances in the forest, and his encroachments and wastes, to be viewed every third year.

11. Attendance at the Forest Court necessary (repealed by *Magna Carta*, Art. 44).

13. Every one of the age of twelve years within the jurisdiction of the hunting shall swear to keep peace.

14. Expeditation (p. 59) to be continued where it has been the custom.

15. No tanner, or leather bleacher, to live in the King's forests outside a town.

16. No hunting to take place at night.

MAGNA CARTA.

Chief Clauses, (with references to corresponding Clauses in the Articles of the Barons).

1. Church to be free (p. 267).

2. Reliefs to be customary, *i.e.*, £100 for an earl, or baron, £5 for a knight (p. 206). *A. B.* 1.

3. 4. 5. 6. Remedy abuses of wardship (p. 207). *A. B.*, 2, 3.

7. 8. Widows to have their dowers, and not to be forced to marry against their will. *A. B.*, 4, 17.

9. 10. 11. Alleviate treatment of debtors. *A. B.*, 5.

12. "No Scutage or aid shall be imposed in our kingdom, unless *per commune consilium regni*, except to ransom the King's person, to make his eldest son a knight, and to marry his eldest daughter once; these aids must be reasonable, and so shall the aids of the City of London be" (p. 205). *A. B.*, 32.

13. London, and all towns, to have their ancient liberties and customs (p. 257). *A. B.*, 32.

14. "And to take the common council of the realm about assessing an aid, other than in the three cases above-mentioned, or about assessing a scutage, we will cause archbishops, bishops, abbots, earls, and greater barons to be summoned *each severally by our letters*, and moreover, we will cause all those who hold of us in *capite* to be summoned *by a general summons through our sheriffs and bailiffs*, on a certain day, at least forty days distant, and to a certain place. And in all letters of summons we will declare the cause of summons, and when summons has been made the business assigned for the day shall proceed according to the advice of those present, although not all who were summoned come."

15. No baron to take any aid from his men except the three usual ones. *A. B.*, 6.

16. Services for a knight's fee to be only what is due. *A. B.*, 7.
17. Common Pleas shall not follow our Court, but be held in some fixed place (p. 55). *A. B.*, 8.
18. 19. Assizes of Novel Disseisin, Mort d'Ancestor, and Darrein Presentment, to be held four times a year in each county, before the King, or two Justices, and four knights elected by the county (pp. 83, 84). *A. B.*, 8.
20. 21. 22. Fines to be proportionate to the offence, and imposed according to the oath of honest men of the neighbourhood. No amercement to touch the tenement of a free man, the merchandise of a merchant, or the agricultural tools of a villein, and earls and barons to be amerced by their equals. *A. B.*, 9, 10.
23. No one to be compelled to make bridges, unless it is his duty. *A. B.*, 11.
24. No Sheriff, Constable, Coroners, or other bailiffs of the King, shall hold pleas of the Crown. (This goes further than *A. B.*, 14, which asks that no Sheriff shall meddle with pleas of the Crown without the Coroners).
25. All counties, hundreds, and tithings to be at the old *ferm*, saving the King's demesne. *A. B.*, 14.
26. On the death of a debtor to the King, the Sheriff may seize chattels to the value of the debt. *A. B.*, 15.
27. Property of intestates to be distributed by the next of kin, under the supervision of the Church. *A. B.*, 16.
28. No constable or bailiff of the King to take any corn, or chattels, without paying at once (p. 173). *A. B.*, 18.
29. Knights on service to be free from duty of castle ward. *A. B.*, 19.
30. No Sheriff or bailiff to impress conveyances for the King's service except with the owner's consent (p. 173). *A. B.*, 20.
31. No wood to be taken for the King's use without consent of the owner. *A. B.*, 21.
32. The lands of those convicted of felony to be held by the Crown for a year and a day only. *A. B.*, 22.
33. Wears (*Kydelli*), to be abolished, except on the coasts. *A. B.*, 23.
34. The writ *Præcipe* shall not be issued so that a freeman shall lose his right of jurisdiction. *A. B.*, 24.
35. Weights and measures to be uniform. *A. B.*, 12.
39. Nothing shall be given or taken for the future for the Writ of Inquisition of life or limb, but it shall be freely granted and not denied (p. 233). *A. B.*, 26.
37. The wardship of land held of an intermediate lord by a tenant who holds other land of the King, shall not belong to the King. *A. B.*, 27.
38. No one to be brought to trial on the bare word of a bailiff, without trustworthy witnesses. *A. B.*, 28.
39. No freeman shall be seized, or imprisoned, or dispossessed (of his land), or outlawed, or exiled, or in any way injured, nor will we go against him, or send (a force) against him, except by the lawful judgment of his equals, or by the law of the land (pp. 232, sq.). *A. B.*, 29.

40. To no one will we sell, or deny, or delay, right or justice. *A. B.*, 30.
41. All merchants to have a safe conduct throughout the country, to buy and sell without any evil tolls according to ancient and lawful customs; in time of war foreign merchants to be detained until it is seen how English merchants are treated by the enemy (p. 226). *A. B.*, 31.
42. Freedom of entering and quitting the realm allowed, except in war time. *A. B.*, 33.
43. The tenants of escheated baronies to pay the same relief as if the baronies were still held of the barons. *A. B.*, 36.
44. Persons dwelling outside the forests need not attend the forest courts, unless impleaded (p. 177). *A. B.*, 39.
45. Constables, Sheriffs, and Bailiffs to be appointed from those who know the law, and will keep it. *A. B.*, 42 (*against foreigners*).
46. Barons who have founded abbeys to have the custody of them, when vacant. *A. B.*, 43.
47. All forests afforested in John's reign to be disafforested (p. 178). *A. B.*, 47.
48. All evil customs connected with forests to be enquired into by twelve sworn knights of the county, and to be abolished (p. 177). *A. B.*, 39.
49. All hostages and title deeds, delivered to the King as security of peace, or of faithful service, to be given back. *A. B.*, 38.
50. Certain individuals to be removed from their bailiwicks. *A. B.*, 40.
51. All foreigners and mercenaries to quit the realm (p. 292). *A. B.*, 41.
52. Restitution to be made to those unlawfully dispossessed; disputed cases to be settled by twenty-five barons. *A. B.*, 25.
53. Justice to be done in disafforesting after the King's return from his journey.
54. No one shall be seized, or imprisoned, on account of the appeal of a woman about the death of any one but her husband.
55. Unjust fines to be remitted. *A. B.*, 37.
56. 57. 58. Justice to be done to the Welsh, in cases where they have been illused. *A. B.*, 44, 45.
59. The rights of Alexander of Scotland to be restored. *A. B.*, 46.
60. All the aforesaid customs and liberties to be observed by the Clergy and Laity to their retainers. *A. B.*, 48.
61. Provides for the proper execution of the provisions of the Charter by a Committee of twenty-five barons. *A. B.*, 49.
62. Announces the reconciliation between the King and people.
63. The English Church to be free, and *every one in the kingdom* to have and hold all the aforesaid liberties, rights, and concessions.

PROVISIONS OF OXFORD, 1258.

The Church to be reformed as the Council see time or place.

The Justiciar, Treasurer, and Chancellor to be appointed for a year, and at the end to give an account of their proceedings, while in office, to the King and Council (pp. 247, 248).

The Chancellor is to seal nothing by the sole will of the King.

The salaries of the Judges to be raised to prevent their taking bribes.

The Sheriffs to be loyal and substantial, to hold office for a year, and to give an account of their period of office (pp. 242, sq.).

Magna Carta to be kept, and no talliage taken except in accordance with it.

Three Parliaments to be held annually.

The scheme of government is drawn out (p. 16).

PROVISIONS OF WESTMINSTER, 1259.

Re-enacted 1262, 1264, and embodied as the Statute of Marlborough, 1267. Twenty-four Articles; chief of which are—

1. Limits the right to exact suit and service, where it is not due.
2. If an estate is liable for one suit only, and is divided amongst several heirs, the eldest shall discharge the suit, the others paying their share.
3. Limits the right of distraint.
4. Exempts magnates from attendance at the Sheriff's tourn, which is to be held as was customary (p. 67).
7. Regulates Darrein Presentment, and the plea *quare impedit*, about vacant Churches.
8. Exemption to knights from serving on juries.
9. 10. Check abuse of wardship and succession.
11. Limits the right of feudal lords to distrain.
12. Extends to *socage tenants* certain advantages of military tenants with regard to wardship and marriage.
13. Amercement for default of common summons only to be made by the Justiciar and Itinerant Justice.
14. Religious persons not to enter on the fee of any one without the leave of the lord from whom the estate is immediately held. See *Mortmain Statute*.
16. Pleas of false judgment made in the court of his tenants, to be reserved for the King.
18. Distraint on freehold requires the royal writ.
19. 20. Against fraudulent bailiffs and farmers.
22. Death by misadventure shall not come before Itinerant Justices, but only cases of persons feloniously killed.

DICTUM DE KENILWORTH, 1266.

Forty-one Articles.

1. The King to freely exercise his dominion, authority, and royal power, without any one's hindrance or contradiction, through which, contrary to the approved rights, laws, and customs of the realm long established, the dignity of the King may be assailed.
2. 3. The King to appoint fit persons to administer justice, and to respect all Liberties and Charters.
4. Grants, made spontaneously by the King, to be kept; liberties and customs of the Church to be respected.
5. The rebels who come into the King's peace within forty days to have an amnesty.
6. Act of Resumption (p. 169).
7. Provisions of Oxford, and writings, obligations, and instruments consequent thereon, to be annulled.
10. Against purveyance (p. 173).
11. Asks for the Reform of London.

12. 'Rebels to be able to redeem their lands.

23. Twelve Commissioners to be appointed to execute these Provisions, which are to be firmly observed and maintained by the King and his heirs.

37. The King's peace to be firmly kept.

The other Articles are mainly Articles of reconciliation and amnesty.

STATUTE OF MARLBOROUGH, 1267.

Is simply the Provisions of Westminster, 1259, in Statute form.

STATUTE OF WESTMINSTER I., 1275 (3 Edw. I.)

Fifty-one Clauses, chiefly—

Regulating feudal incidents such as aids and reliefs ;

Checking feudal abuses ;

Providing for the freedom of Elections ; and

Regulating judicial matters.

STATUTE OF MORTMAIN (*de viris religiosis*), 1279 (7 Edw. I., c. 2.)

Provides that no "religious" person, or any other, shall presume to buy or sell any lands or tenements, or under pretence of a gift, or term, or any other title whatsoever, receive from any one, or in any manner, either by device or craft, appropriate to himself lands or tenements so that they come in any way into Mortmain (*i.e.*, the dead hand of a Corporation, p. 268), under penalty of forfeiture of the same. Its germ may be seen in the 43rd Article of the second re-issue of the Charter, 1217, and in the 14th Article of the *Provisions of Westminster*.

STATUTE OF WESTMINSTER II., June 1285 (*de donis conditionalibus*, p. 209), 13 Edw. I.

Allows entail, regulates the judicial system, providing that Justices of Assize go on circuit to every county twice or three times a year, and confirms a good deal of previous legislation.

STATUTE OF WINCHESTER, Oct., 1285.

1. Forbids the compounding or concealment of felonies. Regulates the hue and cry.

2. Districts, in which felonies are committed, are to produce the bodies of the culprits within forty days, or be liable.

4. Regulates the watch and ward in towns ; strangers to be questioned, and if suspicious detained.

5. High roads to be cleared of trees and bushes up to two hundred feet on either side, so that robbers may not lurk therein.

6. Every man is to have in his house the equipment "determined by law," as necessary to keep the peace (*see Assize of Arms*).

STATUTE OF WESTMINSTER III., 1290 (*quia emptores*).

Checks subinfeudation (p. 209), and provides "that henceforth it shall be lawful for any freeman to sell at will his land tenement, or any part of it ; *provided that* the receiver of the fee shall hold that land or tenement from the same chief lord, and on the same conditions of service, and the same customs, as the alienor of the fee formerly held it."

CONFIRMATION OF THE CHARTERS, 1297.

1. Magna Carta, and the Charter of the Forest, are to be kept

in every point, and published, together with the Confirmation, throughout the kingdom.

2. Any judgment given contrary to these Charters to be void.

3. The Charters to be kept in the Cathedrals, and read twice a year.

4. Those who infringe the Charters to be excommunicated.

5. The aids, tasks, and prises obtained from the people are not to be a precedent (p. 17).

6. No such aids or prises to be taken henceforth except by the common consent of the realm, and for the common profit, except the ancient aids, and the due and customary prises.

7. The Maletote of 40/. on the sack of wool not to be exacted without the common consent, saving the customs of wool, skins, and leather already granted by the commonalty.

PETITION OF RIGHT, 1628 (3 Car. I., c. 1).

Eleven Articles.

1. Refers to the *de Tallagio non concedendo* (pp. 18, 182), as a Statute forbidding foreign loans, benevolences, and taxation, without the consent of Parliament.

2. Complains of commissions recently issued to levy money, and of the punishment of imprisonment being inflicted on those refusing to pay, in defiance of the Statute.

3. Quotes Magna Carta (p. 304).

4. Quotes (28 Edw. I.), on the liberty of the subject (pp. 232, sq.).

5. Complains that these Statutes have been violated; writs of *habeas corpus* (p. 233) refused, and no cause of imprisonment assigned except "by the King's special command."

6. Complains of the practice of billeting soldiers and sailors.

7. 8. 9. Complain of martial law being enforced against private individuals contrary to 25 Edw. III. (p. 294).

10. 11. Sum up the grievances of benevolences, illegal taxation, illegal imprisonment, billeting, and martial law, and pray for relief.

This "Petition" became a Statute by the assent of the King, "*Soit droit fait comme est désiré.*"

HABEAS CORPUS ACT, 1679 (31 Car. II., c. 2.)

Twenty-one Articles.

1. Mentions the frequency of illegal imprisonment, and refusal of *Habeas Corpus* writs.

2. Provides that, except in cases of commitment for treason (pp. 2, sq.), or felony, gaolers must within three days of the reception of the writ produce the prisoner "before the Lord Chancellor, or Lord Keeper of the Great Seal of England for the time being, or the Judges, or Barons of the Court from whence the said writ shall issue"; if the Court is more than twenty miles distant, the time is extended to ten days, and if more than a hundred miles distant, to twenty days.

3. No gaoler may plead ignorance; if a commitment is made during the vacation time, an appeal may be made to the Chancellor, or one of the Judges, who shall issue a writ returnable within two days, and shall take such sureties for the prisoner's appearance as he may deem advisable, unless the prisoner is "detained upon a legal

process, order, or warrant out of some Court that hath jurisdiction of criminal matters,* or is committed for an unbailable offence.

4. No *Habeas Corpus* to be granted in vacation time to persons neglecting to demand one for two terms.

5. Gaolers refusing to make returns, or to give a copy of the warrant of commitment, within six hours after it is demanded, to forfeit £100 for the first offence, and £200 for the second.

6. No one set at large upon any *Habeas Corpus* to be re-committed for the same offence, except by the Court having jurisdiction of the cause, under a penalty of £500.

7. Persons committed for high treason or felony may be liberated on bail, if not indicted in the second term of their commitment.

8. The Act not to apply to cases of debt.

9. No one to be removed from one prison or gaol to another except by *Habeas Corpus*, or some other legal writ.

10. *Habeas Corpus* may be obtained from the Courts of Chancery, Exchequer, King's Bench, or Common Pleas, and must not be denied to any one, under a penalty of £500.

11. A writ of *Habeas Corpus* may run in any County Palatine (p. 213), Cinque Port (p. 215), or other privileged place, and into the Channel Isles.

12. 13. 14. 15. 16. All imprisonment beyond the seas declared illegal, except when prayed for.

17. All offences against the Act must be sued against within two years.

18. 19. Provide against persons avoiding the Assizes by claiming their *Habeas Corpus*.

21. The Act not to apply to persons committed on reasonable suspicion of petty treason and felony.

BILL OF RIGHTS, 1689 (1 Wm. & Mary, sess. 2, c. 2).

I. After rehearsing the various illegal acts whereby James II. abdicated the government, and the throne was declared void, declares the following illegal :—

(i.) The exercise of the suspending power without the consent of Parliament (p. 165).

(ii.) The dispensing power "as it hath been assumed and exercised of late" (p. 166).

(iii.) The Court of Commissioners for ecclesiastical causes (p. 51).

(iv.) Levying money by pretence of prerogative, without grant of Parliament.

(v.) Interference with the presentation of petitions to the King. (See *Case of the Seven Bishops*, Appendix B.)

(vi.) Raising or maintaining a Standing Army without the consent of Parliament (p. 292).

(vii.) It also enacted that Protestants may keep suitable arms for their defence.

(viii.) That the election of Members of Parliament should be free.

(ix.) That freedom of speech in proceedings in Parliament shall not be questioned, except in Parliament.

(x.) That excessive bail, fines, and punishments are illegal.

(xi.) That jurors must be duly empanelled, and in cases of High Treason (pp. 2, sq.) must be freeholders.

(xii.) That grants of fines and forfeitures before conviction are void.

(xiii.) And that "for the redress of grievances, and the amending, strengthening, and preserving of the laws frequent Parliaments ought to be held."

2. It settles the succession (i.) on William and Mary, and the heirs of the body of Mary; (ii.) in default of such issue on the Princess Anne of Denmark, and the heirs of her body, and failing them on the heirs of the body of William III.

3. It substitutes new oaths to be taken "by all persons of whom the oaths of allegiance and supremacy might be required by law."

4. Recites the acceptance of the Crown on these conditions by William and Mary.

5. Parliament to sit to provide for "the settlement of the religion, laws, and liberties of this kingdom."

6. All the clauses in the Declaration of Rights are "the true, ancient, and indubitable rights and liberties of the people of this realm."

7. James II. "having abdicated the government," William and Mary are King and Queen.

9. Excludes from the succession those who hold communion with the Church of Rome, profess the Popish religion, or marry a Papist.

10. The Sovereign to assent on succession to the Act, 13 Car. II., for disabling Papists from sitting in either House of Parliament.

12. Declares the invalidity of dispensation by *non obstante*.

ACT OF SETTLEMENT, 1700 (12 and 13 William III.).

1. After referring to the Bill of Rights, excludes Roman Catholics from the succession, declares that if a Papist obtained the Crown, "the people of these realms shall be, and are thereby, absolved of their allegiance," and settles the Crown on the Electress Sophia and the heirs of her body being Protestants.

2. Excludes all persons holding communion with the Church of Rome, professing the Popish religion, or marrying a Papist.

3. Provides that, to secure the religion, laws, and liberties of the country—

(i.) The Sovereign shall join in communion with the Church of England as by law established.

(ii.) No war shall be undertaken in defence of any territories not belonging to the Crown of England, except with the consent of Parliament.

(iii.) The Sovereign not to quit Great Britain and Ireland without the consent of Parliament.

(iv.) All matters cognisable in the Privy Council to be transacted there, and resolutions to be signed by the councillors advising the same (p. 43).

(v.) Aliens (although naturalised, or denizens, except they are born of English parents), declared incapable of becoming Privy Councillors, Members of Parliament, of holding any civil or military post of trust, or of holding lands from the Crown.

(vi.) No placeman or pensioner to sit in Parliament (p. 138).

(vii.) Judges to hold office *quamdiu se bene gesserint*.

(viii.) No pardon under the Great Seal to be pleadable to an impeachment by the Commons (p. 150).

4. All laws for securing the established religion, and the liberties of the people, to be confirmed and ratified.

APPENDIX B.

SOME OF THE MORE IMPORTANT CASES IN CONSTITUTIONAL HISTORY.

ASHBY v. WHITE, 1702—1704 (pp. 110, 117).

Ashby, an elector of Aylesbury, brought an action against *White*, a returning officer, for refusing his vote, and obtained a verdict; this decision was reversed in the Court of Queen's Bench, but confirmed by the Lords, Jan., 1704. The action of the Lords led to a quarrel with the Commons, who declared that the decision of the rights of electors lay with the Lower House. The dispute was ended for a time by a prorogation, though the question remained undecided. (See *Case of the Aylesbury Men*.)

AYLESBURY MEN, CASE OF THE, 1703—1704 (pp. 110, 116, 118).

On the decision in *Ashby v. White* (above,) being given, five Aylesbury men brought actions against the returning officers, and were committed by the Commons for breach of privilege. A writ of error to the Lords was refused by the Commons, and the Upper House requested the Queen to interfere. A prorogation ensued, and the Aylesbury Men, continuing their action, won their case against the returning officers.

BARNARDISTON v. SOAME, 1674 (26 Car. II.), (p. 109).

An action brought against *Soame*, Sheriff of Suffolk, for making a double return in the County election; the plaintiff, *Barnardiston*, being one of those returned. *Barnardiston* at first obtained a verdict, but this was set aside by the Exchequer Chamber, and by the House of Lords. An Act was, however, subsequently passed, 1696 (7 and 8 Wm. III., c. 7), making double returns a ground for an action.

BATES' CASE, or Case of Impositions, 1606 (4 Jac. I.), (pp. 24, 55, 180, 192).

An action brought against a Levant merchant named *John Bates*, for refusing to pay a tax of 5/. a hundred weight on currants, imposed by the King. It was held that the King had power to impose such a tax, on the ground that the customs, as being connected with foreign affairs, were under the absolute control of the King.

BURDETT v. ABBOTT, 1811 (51 Geo. III.), (p. 116).

Brought for trespass by Sir Francis Burdett against the Speaker, who had issued a warrant against him for contempt; in the execution of this warrant the plaintiff's house was broken into. The trespass was held to be justifiable, as the power of the House to commit for contempt was undoubted.

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BUSHELL'S CASE, 1670 (22 Car. II.), (p. 83).

Two Quakers, Mead and Penn, tried under the Conventicle Act (p. 278), were acquitted contrary to the direction of the Recorder of London. The jury were fined for contempt, and Bushell, their foreman, in default of payment, was imprisoned; on his suing out his writ of *Habeas Corpus* Lord Chief Justice Vaughan held that finding a verdict "against full and manifest evidence, and against the direction of the Court" was *not* sufficient ground for imprisonment. *By this decision the immunity of juries was established.*

BUTLER v. CROUCH, 1568 (9 and 10 Eliz.), (p. 223).

Involved a question of Villenage, *Butler* having entered on the lands of *Crouch*, as being his villein was ejected by the defendant, in whose favour a decision was given.

CALVIN'S CASE, or Case of the Postnati, 1608 (6 Jac. I.), (p. 229).

James I., wishing the union of the Crowns of England and Scotland to naturalise all those born after 1603 (*postnati*), caused an action to be brought in the name of one Robert Calvin, born 1605, against two persons who were supposed to have robbed him of his lands; to hold land in England he must be naturalized. A decision in favour of the naturalisation of the *postnati* was given.

COMMENDAMS, CASE OF, 1616 (pp. 24, 85).

An action was brought against Neile, Bishop of Lichfield, for holding a living in *commendam* (i.e., together with his bishopric), by two persons who claimed the presentation to the living. James I. thereupon ordered the Judges not to proceed in the case until he had consulted with them; they disobeyed, and were severely reprimanded. All made submission but Chief Justice Coke, who was in consequence dismissed by the King.

DAMAREE AND PURCHASE, CASE OF, 1710 (9 Anne), (p. 4).

Daniel Damaree, and *George Purchase*, having participated in a riot arising out of the impeachment of Dr. Sacheverell for preaching "scandalous and seditious sermons," were convicted of treason; the decision being that their action in setting fire to *certain* meeting houses was proof presumptive of a design to burn down *all* meeting houses, and was therefore an overt act of levying war.

DARNEL'S CASE, 1627 (pp. 24, 194, 234).

Sir Thomas Darnel being imprisoned for refusing to give a forced loan to the King sued out his writ of *Habeas Corpus*. The Warden of the Fleet returned that he was imprisoned "by the special command of the King." The Judges, headed by Sir Nicholas Hyde, Chief Justice, held that this was sufficient ground for imprisonment; this decision caused great alarm in the country, as being contrary to Magna Carta, and to a Statute of 28 Edw. III.; and led to the *Petition of Right*, 1628.

ELIOT'S CASE, 1630 (pp. 105, 234).

Sir John Eliot, Denzil Hollis, and Benjamin Valentine were imprisoned by the Court of King's Bench for words spoken in the Commons. These proceedings were declared illegal 1641, and the decision was formally reversed by the Lords 1668.

FERRERS' CASE, 1543 (p. 101).

George Ferrers, a member of the Commons, arrested as surety for the debt of a friend, was released by the Sergeant at Arms, acting under the authority of the House, which also committed to prison all those concerned in the arrest. The Commons, refusing a *Writ of Privilege* offered them by the Lord Chancellor, established (1) their right to demand the delivery of a Member, (2) their right to commit others to prison.

* GODDEN v. HALES, 1686 (2 Jac. II.), (p. 166).

A collusive action brought by a servant of *Sir Edward Hales* against his master for not taking the oaths of Supremacy and Allegiance in accordance with the Statute of 1673 (25 Car. II.). *Sir Edward* pleaded the King's dispensation, which was held to be a good defence.

* HAMPDEN'S CASE, a Case of Ship-money, 1637 (13 Car. I.), (p. 192).

Mr. Hampden refused to pay *ship-money* as illegal, and forbidden by various Statutes, e.g., Magna Carta, 25 Edw. I., the Petition of Right, and other Statutes. The decision was in favour of the Crown; seven judges were for the Crown, five for the defendant.

HAXEY'S CASE, 1397 (21 Ric. II.), (p. 103).

*Sir Thomas Haxe*y, a Member of Parliament, was impeached for introducing a Bill to regulate the expenses of the Royal Household. This conviction was reversed by the King, and both Houses in the next reign (1 Hen. IV., 1399), the *privilege of free discussion* being recognised.

✓ MURRAY'S CASE, 1751 (24 Geo. II.), (p. 116).

Alexander Murray, charged by the Returning Officer of Westminster with insulting him in the execution of his duty, was sent to Newgate, and ordered to receive his sentence on his knees. He refused, and no one was, in consequence, permitted to have access to him. He sued out his writ of *Habeas Corpus*, but the Judges refused to grant one, holding that they had no power to judge of the privileges of the House, and that committal for contempt of the House of Commons was sufficient.

PEACHAM'S CASE, 1615 (12 Jac. I.), (p. 3).

In Aug., 1615, *Edmund Peacham*, a clergyman, who was accused of having preached a libellous sermon, was convicted of treason. The case is important, as the conviction was obtained by the evidence of a sermon found in *Peacham's* study, and which *had never been preached or published*; the admission of this sermon in evidence was strongly opposed by Chief Justice Coke.

PIGG v. CALEY, 1617 (15 Jac. I.), (p. 223).

The last case of Villenage (p. 223), in a Court of Law. *Pigg* having brought an action against *Caley* for stealing his horse, *Caley* pleaded that *Pigg* was a *villein regardant* of a manor of which he was seized. *Pigg* declared that he was free, and the decision was in his favour.

PROCLAMATIONS, CASE OF, 1610 (8 Jac. I.), (p. 165).

The Judges, headed by Lord Chief Justice Coke, decided that the

King's Proclamation cannot alter the common or statute law, nor create new offences; it can only enforce the observance of laws already made.

* PROHIBITIONS, CASE OF, 1607 (5 Jac. I.), (p. 84).

On James I. attempting to assert the King's right to hear cases and to give judgment thereon, it was held by Chief Justice Coke that no such power was vested in the Sovereign, who, although he might sit in the Court of King's Bench, might not interfere with the course of Justice.

* SEVEN BISHOPS' CASE, 1688 (4 Jac. II.), (pp. 126, 167).

In 1688 James II. commanded a Declaration of Indulgence, to be read in all the Churches. Seven Bishops, *viz.*, Archbishop Sancroft, Bishops Lloyd of St. Asaph, Trelawney of Bristol, Ken of Bath and Wells, Lake of Chichester, White of Peterborough, and Turner of Ely, petitioned against this, stating that the Declaration was founded on the dispensing power (p. 166), which had been declared illegal. They were tried for a seditious libel and acquitted. The Bishops not only possessed as subjects the right of petitioning the Crown, but as Peers of Parliament they had the right of individual access to the Sovereign.

* SHIRLEY'S CASE, 1603 (1 Jac. I.), (p. 102).

On Sir Thomas Shirley, a Member of the Commons, being imprisoned for debt, his release was refused by the Warden of the Fleet, on the ground that if the prisoner was set at liberty his gaoler would become answerable for his debt. Shirley was, however, released at the King's request, and an Act was passed to the effect (1) that any gaoler releasing a Member of Parliament imprisoned for debt should not become liable to the creditor; (2) that the creditor might sue the Member when Parliament had ceased to sit.

* SHIRLEY *v.* FAGG, 1675 (27 Car. II.), (p. 118).

Shirley having appealed to the Lords from a decision of Chancery in favour of Sir John Fagg, the Commons declared that the Lords had no appellate jurisdiction from the Courts of Equity. The dispute ended in the Lords retaining their right.

* SIDNEY'S CASE, 1683 (35 Car. II.), (p. 3).

In November, 1683, *Algernon Sidney* being tried on a charge of high treason for having participated in the Rye House Plot, was convicted through the admission, instead of a second witness, of a manuscript found in his house, which contained certain remarks of a treasonable nature. (See *Peacham's Case*).

* SKINNER *v.* THE EAST INDIA COMPANY, 1668 (20 Car. II.), (pp. 118, 127).

Skinner made a successful appeal to the Lords against the Company, who thereupon petitioned the Commons as to the original jurisdiction of the Lords. A violent quarrel between the two Houses was the result, ending in a reconciliation at the instance of the King. The Lords have not exercised an original jurisdiction in civil actions since this time.

SMALLEY'S CASE, 1575 (p. 102).

Smalley, the servant of Arthur Hall, a Member of the House of Commons, being imprisoned for debt, was released by the Sergeant at Arms. Subsequently, however, he was punished for having acted in the case in a fraudulent manner with the object of releasing himself from the obligation of the debt.

SOMMERSETT'S CASE, 1771. Sommersett, a slave, being brought to England, left his master, who thereupon detained him with the object of getting him conveyed abroad and sold. A writ of *Habeas Corpus* being issued, it was decided by Lord Chief Justice Mansfield that slaves landing in England, obtain their freedom and cannot be compelled to leave the country.

STOCKDALE v. HANSARD, 1839 (pp. 117, 239).

Brought for libel against Messrs. *Hansard*, the Parliamentary printers, for printing a report by order of the Commons, in which a book by *Stockdale* was described as "disgusting and obscene." The defence was the order and privilege of the Commons; it was held that this was insufficient, and that the House of Commons cannot authorise the publication of a libel.

STRODE'S CASE, 1512 (4 Hen. VIII.), (p. 104).

Richard Strode, a Member of Parliament, was imprisoned by the Stannary Courts (p. 61), for having introduced a Bill to regulate the tin mines. *Strode* was released by Writ of Privilege, and an Act was passed declaring "all suits and condemnations for a Bill, or speaking in any matter concerning the Parliament to be utterly void and of none effect."

THOMAS v. SORRELL, 1674 (25 Car. I.), (p. 166).

An Act, 7 Edw. VI., 1554, forbade the sale of wine without a licence. James I. having relaxed this Statute in favour of the *Vintner's Company*, an action was brought by the plaintiff against the defendant for selling wine without a licence. It was held that James' patent, granted *non obstante* any Act to the contrary, was valid.

THORPE'S CASE, 1452 (31 Hen. VI.), (p. 101).

On *Thomas Thorpe*, Speaker of the House of Commons, being imprisoned at the instance of the Duke of York for a debt, the Commons appealed to the Lords who referred the matter to the Judges. The Judges, whilst holding that all "determination and knowledge of Privilege belonged to the Lords and not to the Justices," went on to say that "if the person of any Member of Parliament be arrested in such cases as be not for *treason, felony, or surety of the peace*, or for a condemnation before Parliament, he should be released so as to have freedom to attend Parliament." In spite of this the Lords refused to release Thorpe, a decision subsequently held in the Lower House to have been "begotten by the iniquity of the times."

THROMMORTON'S CASE, 1554 (pp. 49, 82).

Sir Nicholas Thrommorton was tried for high treason and acquitted; thereupon the jury were imprisoned and heavily fined by the Court of Star Chamber.

WASON *v.* WALTER, 1868 (pp. 107, 239).

An action brought against the proprietor of the *Times*, for publishing a debate in the Lords defamatory of the plaintiff, who had presented a petition to the Lords reflecting on the character of a judge lately deceased, and for writing a leading article in approbation of the debate. Lord Chief Justice Cockburn held that no action would lie, as the article in question was justified by obvious public interest.

WILKES *v.* WOOD, 1763 (p. 236).

An action brought by *Wilkes* against a Secretary, who had broken into his house to search for papers under a general warrant issued by Lord Halifax, one of the Secretaries of State. *Wilkes* obtained £800 damages on the ground that *general warrants* (p. 236) are illegal.

[LEACH *v.* MONEY, 1765, and ENTICK *v.* CARRINGTON, 1765, were similar cases, verdicts being given for the plaintiffs; in the latter case the illegality of a warrant to seize papers in the case of a seditious libel was asserted.]

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